Office-Supreme Court, U.S.
FILED
SEP 2 1981
ALEXANDER L. STEVAS, CLERK

No. 80-1481

In the Supreme Court of the United States

OCTOBER TERM, 1981

BREAD POLITICAL ACTION COMMITTEE, NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION, LUMBER DEALERS POLITICAL ACTION COMMITTEE, NATIONAL RESTAURANT ASSOCIATION and the RESTAURATEURS POLITICAL ACTION COMMITTEE,

Appellants,

v.

THE FEDERAL ELECTION COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

JEFFREY COLE
Jeffrey Neal Cole, Ltd.
180 North LaSalle Street
Suite 3100
Chicago, Illinois 60601
(312) 782-8300
Counsel for Appellants

Of Counsel:
STANLEY KALECZYC
National Chamber Litigation Center, Inc.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 659-3180

CHARLES N. STEELE
General Counsel
RICHARD B. BADER
Assistant General Counsel
MIRIAM AGUIAR
KIM L. BRIGHT
Attorneys
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
(202) 523-4143
Counsel for Appellees

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

APPEAL DOCKETED MARCH 2, 1981.
JURISDICTION POSTPONED JULY 2, 1981.

In the
Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-1481

BREAD POLITICAL ACTION COMMITTEE, NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION, LUMBER DEALERS POLITICAL ACTION COMMITTEE, NATIONAL RESTAURANT ASSOCIATION and the RESTAURATEURS POLITICAL ACTION COMMITTEE,

Appellants,

v.

THE FEDERAL ELECTION COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

TABLE OF CONTENTS

	PAGE
Docket Entries	1
Complaint For Declaratory And Injunctive Relief	15
Answer to Complaint	36
Motion For Leave to Amend the Complaint	43
Answer to Plaintiff's Amendments	46
Findings of Fact	48
Order Certifying Constitutional Questions	105
Affidavit of David Keane	107
Affidavit of James Buckley	110

APPENDIX

DATE OF FILING	LIST OF DOCUMENTS
3-22-77	Filed complaint and 13 copies. JS5
3-22-77	Filed civil cover sheet.
3-22-77	Filed affidavit re general rule 39.
3-22-77	Issued summons and 13 copies with 13 copies of complaint. gg
4-12-77	Filed Marshal's return of summons and complaint, return served as to Vernon Thomson, Thomas Harris, Neil Staebler, Joan Aikens, Robert Tiernan, Federal Election Commission, William Springer, Edward Henshaw. (8 services) gg
4-15-77	Filed Marshal's return of summons and complaint. return served as to Samuel Skinner, by cert. mail. gg
6-2-77	Filed Marshal's return of summons and complaint, return unexecuted as to Honorable Francis R. Valeo. gg
6-8-77	Filed motion of the Federal Election Commission to dismiss for lack of jurisdiction. gg
6-10-77	Filed defendant Griffin Bell's Notice.
6-10-77	Filed defendant Griffin Bell's motion to dismiss.
6-10-77	Filed defendant Griffin Bell's memorandum in support of motion to dismiss.
6-14-77	Enter order dated June 10, 1977; Government's motion to dismiss defendant Griffin Bell, granted.

List of Documents

Plaintiff granted to and including June 24, 1977 to answer; defendant to reply on or before July 8, 1977. Federal Election commission's motion to dismiss taken on briefs. Court to rule by mail. —MARSHALL, J

Notices Mailed 6-14-77 gg

6-30-77 Enter order dated June 29, 1977; Enter order directing plaintiffs to serve William C. Oldaker, 1325 K Street N.W., Washington, D.C. with all papers, —MARSHALL, J

Notices Mailed 6-30-77 gg

7-8-77 Filed plaintiffs' notice of motion with motion re leave to file response. gg

7-8-77 Filed plaintiffs' response to defendants' motion to dismiss the complaint.

7-11-77 Enter order dated July 8, 1977; Plaintiffs' motion to file instanter its response to defendants' motion to dismiss and plaintiffs' motion for leave to file brief in excess of 15 pages, granted. —MARSHALL, J

Notices Mailed 7-11-77 gg

7-11-77 Filed defendant Federal Election Commission motion for extension of time in which to file defendants' reply to plaintiffs' response to motion to dismiss. gg

7-8-77 Filed defendant Federal Election Commission's motion for extension of time in which to file defendants' reply to plaintiffs' response to motion to dismiss.

List of Documents

7-18-77 Enter order dated July 8, 1977; Defendant's motion for extension of time in which to file reply to plaintiffs' opposition to and including July 25, 1977 granted. —MARSHALL, J

Notices Mailed 7-18-77 gg

7-28-77 Filed defendant Federal Election Commission's notice of motion with motion for leave to file instanter with reply to plaintiffs' response to defendants' motion to dismiss the complaint. not available gg

8-2-77 Enter order dated July 29, 1977; Defendant Federal Election Commission's motion for leave to file its reply to plaintiffs' response to defendants' motion to dismiss instanter is granted. —MARSHALL, J

Notices Mailed 8-2-77 gg

8-26-77 Filed plaintiff Bread Political Action Committee's emergency motion for an expedited ruling on the Federal Election Commission's motion to dismiss the complaint.

8-29-77 Enter order dated August 26, 1977; Ruling on the Federal Election Commission's motion to dismiss the complaint to be made by mail.—MARSHALL, J

Notices Mailed 8-29-77 gg

9-2-77 Filed plaintiff's Breadpac motion for reconsideration of this court's ruling of Friday, August 26, 1977.

9-6-77 Enter order dated September 2, 1977; The above cause is continued to September 7, 1977 at 9:15

a.m. for plaintiff to present a motion to certify class. —MARSHALL, J

Notices Mailed 9-6-77 gg

9-9-77 Enter order dated September 7, 1977; Defendants' motion to dismiss is denied. —MARSHALL, J

Notices Mailed 9-9-77 gg

9-7-77 Filed plaintiffs' motion for immediate certification of certain questions pertaining to the constitutionality of the Federal Election Campaign Act Amendments of 1976.

9-9-77 Enter order dated September 7, 1977; Plaintiffs' motion for immediate certification to the Court of Appeals for the Seventh Circuit of certain questions pertaining to the constitutionality of the Federal Election Campaign Act of 1976, is denied. —MARSHALL, J

Notices Mailed 9-9-77 gg

9-7-77 Filed plaintiff's motion, Bread Political Action Committee, for a preliminary injunction.

9-9-77 Enter order dated September 7, 1977; On plaintiffs' motion for preliminary injunction, plaintiffs ordered to file their brief within 10 days; defendants to file their answering brief 7 days after service of plaintiffs' brief; plaintiffs to file their reply brief within 3 days of service of defendants' answering brief. —MARSHALL, J

Notices Mailed 9-9-77 gg

9-12-77 Filed defendant Federal Election Commission's motion to submit copy of Clark vs. Valeo. gg

List of Documents

9-28-77 Filed defendant Federal Election Commission's motion for leave to file instanter with answer and notice of motion gg

9-26-77 Filed defendant Federal Election Commission's notice of motion

9-26-77 Filed defendant Federal Election Commission's motion for leave to file instanter.

9-26-77 Filed defendant Federal Election Commission's ANSWER.

10-3-77 Enter order dated September 26, 1977; Defendants' motion for leave to file instanter its answer, granted. —MARSHALL, J

NOTICES Mailed 10-3-77 gg

9-30-77 Filed defendant Federal Election Commission's motion for extension of time in which to file brief. gg

9-30-77 Filed defendant Federal Election Commission's motion for extension of time in which to file brief.

10-5-77 Enter order dated September 30, 1977; Defendant's motion for extension of time to and including October 3, 1977 to file its reply to Breadpac's papers, granted. —MARSHALL, J

Notices Mailed 10-5-77 gg

10-3-77 Filed plaintiff Bread Political Action Committee's reply memorandum.

10-5-77 Filed defendant Federal Election Commission's opposition to plaintiff Breadpac's motion for a preliminary injunction. gg

10-7-77 Enter order dated October 6, 1977; For the reason stated in open court, plaintiff's motion for preliminary injunction is denied.—MARSHALL, J

Notices Mailed 10-7-77 gg

11-2-77 Filed plaintiffs' motion for permission to appeal this court's refusal to transfer the case to the United States Court of Appeals for the seventh circuit as required by 2 USC §437(h).

11-4-77 Enter order dated November 2, 1977; Plaintiffs motion for permission to appeal is granted. — MARSHALL, J not available

Notices Mailed 11-4-77 gg

11-9-77 Enter order dated November 8, 1977; Enter order of certification to the U.S. Court of Appeals for the seventh Judicial Circuit pursuant to 28 USC § 1292 (b). (draft) —MARSHALL, J

Notices Mailed -1-9-77 gg

11-10-77 Clerk's file copy of transcript of proceedings had before Hon. Prentice Marshall on September 7, 1977 and filed by official court reporter. under separate cover

11-10-77 Clerk's file copy of transcript of proceedings had before Hon. Prentice Marshall on October 6, 1977 and filed by official court reporter. under separate cover

11-10-77 Clerk's file copy of transcript of proceedings had before Hon. Prentice Marshall on November 2, 1977 and filed by official court reporter. under separate cover gg

List of Documents

12-21-77 Filed certified copy of order from USCA: "It is ordered by this court, sua sponte, that leave is hereby granted to file instanter nunc pro tunc as of December 6, 1977, the tendered four (4) copies of the "plaintiffs' response to defendants' opposition to plaintiffs' request for permission to appeal". IT IS FURTHER ORDERED that permission for leave to appeal pursuant to 28 USC §1292 (b) is hereby granted. Counsel for the plaintiff-petitioners is hereby directed to comply with rule 5 (d) of the FRAP. not available gg

12-28-77 Filed bond for costs on appeal.

12-28-77 Filed designation for record on appeal, by plaintiff-appellant. gg

1-9-78 Filed designation of record on appeal for additional parts by defendant-appellee.

2-1-78 Certified and transmitted supplement to the record on appeal to the U. S. Court of Appeals consisting of: (1) U.S.C.A. order filed December 21, 1977. gg

7-27-78 Filed affidavit re gen rule 39 by Jeffrey Cole. gg

1-17-79 Enter order dated Jan. 16, 1979; Case set for status, scheduling and to set for hearing Jan. 29, 1979 at 9:30 am —MARSHALL J

1-29-79 Enter order dated Jan. 29, 1979; Status hearing held. Pretrial memrandum filed, pretrial materials due on or before March 19 1979. Status hearing set for March 19, 1979 at 9:30 am Cause set for trial on March 26, 1979 at 10 am —MARSHALL J

List of Documents

2-22-79 Filed 2-21-79 defendant Federal Election Commission's request for production of documents of plaintiff Breadpac

2-22-79 Filed 2-21-79 defendant Federal Election Commission's interrogatories propounded to plaintiff Breadpac (first set)

2-22-79 Filed 2-21-79 defendant Federal Election Commission's request for production of documents of plaintiff National Lumber and Building material dealers association and lumber dealers political action committee.

2-22-79 Filed 2-21-79 defendant Federal Election Commission's request for production of documents of plaintiff National Restaurant association and restaurateurs political action committee. gg

3-7-79 Filed 3-6-79 Federal Election Commission's motion for leave to file instanter

3-7-79 Filed 3-6-79 Federal Election Commission's motion to reschedule the due dates for the pretrial status hearing and trial with points and authorities in support of motion

3-7-79 Filed 3-6-79 Federal Election Commission's motion for leave to file in excess of 20 interrogatories with attachments a - c. gg

3-7-79 Enter order dated March 5, 1979; On motion of defendant, leave is granted to file in excess of 20 interrogatories; on motion of defendant, time for filing pretrial materials is extended to April 23, 1979; report on status continued to April 23, 1979 at 9:30 am cause continued for trial to April

30, 1979 at 10 am This will be the only and final continuance of the trial —MARSHALL, J

3-20-79 Filed 3-20-79 opinion.

3-20-79 Filed certified copy of order from USCA 7th Circuit dated Jan. 12, 1979, "On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and the cause is remanded, in accordance with the opinion of this court filed this date." gg

3-30-79 Filed 3-20-79 defendant Federal Election Commission's notice to take deposition of Bread Political Action Committee. gg

4-9-79 Filed 4-9-79 plaintiffs' objections to defendants' interrogatories gg

4-13-79 Filed 4-12-79 answers of Bread Political Action Committee to interrogatories of defendants.

4-13-79 Filed 4-12-79 answers of National Restaurant Association and Restaurateurs Political Action Committee to defendants' interrogatories

4-13-79 Filed 4-12-79 answers of LUDPAC and NLBMDA to defendants' interrogatories gg

4-24-79 Enter order dated April 23, 1979: Status hearing held. — MARSHALL, J

4-25-79 Filed 4-23-79 defendant Federal Election Commission's proposed stipulation of uncontested facts and statement of contested facts.

4-25-79 Filed 4-23-79 defendant Federal Election Commission's pre trial brief.

List of Documents

4-25-79 Filed 4-23-79 defendant Federal Election Commission's exhibits, witnesses, and depositions which may be introduced at trial by defendant Federal Election Commission. gg

4-27-79 Filed 4-26-79 defendant Federal Election Commission's response to plaintiffs' request for production of documents. gg

4-30-79 Filed 4-25-79 letter addressed to Judge Marshall, dated April 25, 1979 and signed by Jeffrey Cole. gg

5-1-79 Filed 4-30-79 plaintiffs' motion for entry of a protective order.

5-1-79 Filed 4-30-79 plaintiffs' motion for leave to amend the complaint.

5-1-79 Filed 4-30-79 plaintiffs' motion to compel discovery; copy of request for production of documents.

5-1-79 Enter order dated April 30, 1979; Plaintiff granted leave to file motion for leave to amend complaint; motion for entry of a protective order; and motion to compel discovery. Defendant to answer motions by May 14, 1979 at 9:30 am. —MARSHALL, J

5-4-79 Enter order dated May 3, 1979; Ruling date of May 14, 1979 is reset to May 15, 1979 at 9:30 am. —MARSHALL J

5-16-79 Filed 5-15-79 Federal Election Commission's opposition to plaintiffs' motion for leave to amend their complaint.

List of Documents

5-16-79 Filed 5-15-79 response of the Federal Election Commission to plaintiffs' motion for entry of a protective order.

5-16-79 Filed 5-15-79 opposition of the Federal Election Commission to plaintiffs' motion to compel discovery. gg

5-17-79 Enter order dated May 15, 1979; Ruling is continued to May 21, 1979 at 9:30 am. — MARSHALL, J

5-22-79 Enter order dated May 21, 1979; Plaintiff's motion for leave to amend complaint, granted. Defendant to answer as amended within 10 days. Plaintiff's motion for entry of a protective order is denied. Plaintiff's motion to compel discovery is granted. Defendant to produce documents within 2 weeks. Cause set for status hearing on June 15, 1979 at 9:30 am. — MARSHALL, J

6-4-79 Filed 6-1-79 defendant Federal Election Commission's answer to plaintiffs' amendments to their complaint. gg

6-18-79 Enter order dated June 15, 1979; Cause called for status hearing, parties failed to appear. Status hearing continued to November 8, 1979 at 9:30 a.m. —MARSHALL, J

7-2-79 Enter order dated June 29, 1979; Upon receipt of a letter from counsel for plaintiff, which has been filed this date, the order entered on June 15, 1979 is modified to show that the status report on that date was continued by agreement; it is further ordered that cause be set for status on September 11, 1979 at 9:30 a.m. and that the

November 8, 1979 status date is vacated. —MARSHALL J

7-2-79 Filed 6-26-79 letter dated June 26, 1979 addressed to Judge Marshall, dated June 26, 1979 and signed by Jeffrey Cole. gg

7-2-79 Filed 7-2-79 deposition of Joseph William Hobson. gg

9-4-79 Filed 8-31-79 clerk's file copy of transcript of proceedings had before Hon. Prentice Marshall on January 29, 1979 and filed by official court reporter. gg

9-7-79 Enter order dated September 6, 1979; Status hearing date of September 11, 1979 is reset to October 5, 1979 at 12 noon. —MARSHALL, J

10/11/79 Enter order dated October 5, 1979: Status hearing held. Plaintiff to file findings of fact and questions to be certified by October 19, 1979. Defendant to respond by November 2, 1979. Ruling set for November 16, 1979 at 9:30 a.m. MARSHALL, J

10/11/79 Filed Joint Stipulation of Uncontested facts.

10/11/79 Enter order dated October 10, 1979: Status hearing date of November 8, 1979 is stricken. Ruling date of November 16, 1979 to stand. MARSHALL, J

10/11/79 Filed 10/10/79 Deposition of Brian G. Harron.

10/11/79 Filed 10/10/79 Deposition of Francis M. Andrews.

10/11/79 Filed 10/10/79 Deposition of Robert J. Wager. pam

List of Documents

10/11/79 Filed 10/10/79 Deposition of Francis S. Andrews. pam

11/9/79 Filed 11/8/79 Federal Election Commission's Reply to Plaintiff's Proposed Statement of Constitutional Questions for Certification to the USCA, 7th Circuit; certificate

11/9/79 Filed 11/8/79 Amended Statement of Exhibits Which May be Introduced at Trial by Defendant, Federal Election Commission.

11/9/79 Filed Defendants Exhibits 4-01 thru 4-15 (12 bound blue volumes).

11/9/79 Supplemented Record on Appeal to USCA 7th Circuit consisting of above documents.

Note: Original record returned from USCA 7th Circuit msn

REVERSED & REMANDED 3/20/79 msn

11/19/79 Enter order dated 11/16/79; Ruling is continued to November 30, 1979 at 9:30 A.M. MARSHALL, J

Notices mailed 11/19/79. mf

11-30-79 Filed 11-28-79 Plaintiffs' response to the Federal Election Commission's reply to plaintiffs' proposed statement of constitutional questions for certification to the United States Court of Appeals for the Seventh Circuit. hd

12-3-79 Filed 11-28-79 Plaintiffs proposed statement of constitutional questions for certification to the United States Court Of Appeals for the Seventh Circuit.

List of Documents

12-3-79 Filed 11-28-79 Plaintiffs proposed findings of fact.

12-3-79 Filed 11-8-79 Federal Election Commission's reply to plaintiff's proposed statement of constitutional questions for certification to the United States Court Of Appeals for the Seventh Circuit.

12-3-79 Filed 11-28-79 Plaintiff's response to the Federal Election Commission's reply to plaintiffs' proposed statement of constitutional questions for certification to the United States Court of Appeals for the Seventh Circuit.

12-3-79 Enter order dated 11-30-79: Parties directed to prepare draft orders. MARSHALL, J

12-3-79 Filed 11-8-79 Certificate of service. bgm

12-20-79 Enter Order dated 12-19-79: Findings of Facts entered (DRAFT) MARSHALL, J.

12-21-79 Enter Order dated 12-19-79: Enter Constitutional Questions certified to the U. S. Court of Appeals for the Seventh Circuit. (DRAFT) MARSHALL, J.

1-3-80 Filed 12-19-79, joint letter dated 12-14-79 re submission of constitutional questions certified to the U.S.C.A. 7th Circuit. bb

1-16-80 Enter order dated 1-15-80: The Clerk of this Court is directed to certify and transmit the entire record of proceedings in this action to the Court of Appeals for the Seventh Circuit.—Marshall, J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NO. 77 C 947

BREAD POLITICAL ACTION COMMITTEE, NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION, LUMBER DEALERS POLITICAL ACTION COMMITTEE, NATIONAL RESTAURANT ASSOCIATION, and the RESTAURATEURS POLITICAL ACTION COMMITTEE,

Plaintiffs,

v.

THE FEDERAL ELECTION COMMISSION, HONORABLE FRANCIS R. VALEO, Secretary, United States Senate and Ex-Officio Member of the Federal Election Commission, HONORABLE EDWARD HENSHAW, Clerk of the United States House of Representatives and Ex-Officio Member of the Federal Election Commission, HONORABLE VERNON W. THOMSON, Chairman, Federal Election Commission, HONORABLE THOMAS E. HARRIS, Vice Chairman, Federal Election Commission, HONORABLE NEIL STAEBLER, WILLIAM SPRINGER, ROBERT O. TIERNAN, and JOAN D. AIKENS, Commissioners, Federal Election Commission, and the HONORABLE GRIFFIN BELL, Attorney General of the United States,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Bread Political Action Committee, National Lumber and Building Material Dealers Association, Lumber Dealers Political Action Committee, National Restaurant Association, and the Restaurateurs Political Action Committee, by their attorneys, Jerome H. Torshen, Jeffrey Cole and Richard J. Carmel, for their Complaint against the Defendants, state as follows:

JURISDICTION

1. This action seeks a judgment declaring that certain provisions of the Federal Election Campaign Act Amendments of 1976 ("the Act"), (2 U.S.C. § 431 *et seq.*), both facially and as applied to the Plaintiffs, constitute an unconstitutional abridgment of the Plaintiffs', their members' and their members' members' rights to freedom of speech and association and their rights to due process of the law in violation of the First and Fifth Amendments to the Constitution of the United States.

2. This action also seeks a permanent injunction, restraining enforcement of the offending provisions of the Act.

3. The Plaintiffs in this case have been and will continue to be irreparably and immediately harmed by the offending provisions of the Act, and a case and controversy exists between the parties within the meaning of Article III of the Constitution of the United States.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331(a), 2201 and 2202, and 2 U.S.C. § 437h (1976).

5. Pursuant to 2 U.S.C. § 437h, Plaintiffs respectfully request expedited consideration of the questions presented and expedited certification of those questions to the United States Court of Appeals for the Seventh Judicial Circuit (*En Banc*).

PARTIES

6. Plaintiff, Bread Political Action Committee ("BreadPAC"), is a duly constituted non-partisan political action committee registered in accordance with the applicable provisions of the Federal Election Campaign Act of 1971. Pub. L. No. 92-224, 86 Stat. 3, 92d Congress, 1st Sess., 2 U.S.C. § 431(f)(4)(h).

BreadPAC was created and is administered by the American Bakers Association ("ABA"), a not-for-profit corporation incorporated and existing pursuant to the laws of the State of Illinois. Formed in 1944, the ABA's corporate purposes are, *inter alia*, a) to encourage legislation and regulations in the best interests of the Baking Industry through representing the Industry before federal and state legislative bodies, administrative agencies, and consumer groups, b) to increase public understanding of the Baking Industry and the value of its products, c) to promote the nutritional quality of its products, standards of sanitation and safety, d) to educate its members concerning compliance with federal and state laws, and e) to secure cooperation of all bakers and allied organizations in carrying out these purposes.

The ABA is composed of approximately 350 corporate members. Of the 350 corporate members, a substantial number are members of at least one or more separate, distinct trade associations. This overlapping membership stems from the diversity of business interests of many of ABA's members.

7. The purposes of BreadPAC are to protect and strengthen the private enterprise system and American free institutions and to protect and advance the American Baking Industry by supporting those candidates for Federal office whose views are consonant with and sympathetic to those ideals.

8. To advance these goals, contributions are solicited from identified individuals acting on their own behalf, and these contributions are expended by BreadPAC to assist, by means of direct non-partisan financial donations, the campaigns of candidates for Federal office whose views are most harmonious with the goals of BreadPAC and the ABA.

9. Plaintiff, the National Restaurant Association ("NRA"), is a not-for-profit corporation incorporated and existing pursuant to the laws of the State of Illinois and having its headquarters and executive offices at Chicago, Illinois. Formed in March, 1939, its corporate purposes are, *inter alia*, to organize, establish, promote, aid or engage in activities exclusively for charitable, scientific, literary or educational purposes in the fields of agriculture, nutrition, public health, preparation of food, equipment research, human relation studies and other related subjects insofar as such studies and research are undertaken for the betterment of the general public.

10. The NRA is composed of approximately 5,400 corporate members and at least an equal if not greater number of individuals and other non-corporate members. Of the total membership of NRA, a substantial number of corporate (and non-corporate) members are engaged in more than one industry and thus belong to one or more separate distinct trade associations. This overlapping membership stems from the diversity of business interests of many of NRA's members.

11. Plaintiff, the Restaurateurs Political Action Committee ("RPAC"), is a duly organized, not-for-profit, non-partisan political action committee formed in about 1963 by the NRA to protect and promote the interests of the food service industry by supporting candidates to the United States Congress who recognize the need for fiscal integrity and the worth and importance of the free enterprise system. RPAC maintains offices in Chicago, Illinois. RPAC is duly registered with the Federal Election Commission.

12. Plaintiff, the National Lumber and Building Material Dealers Association ("NLBMDA"), is an incorporated federation of thirty local, state and regional associations representing 15,000 retailers across the nation. Incorporated and existing pursuant to the laws of the State of Illinois, NLBMDA is devoted to analyzing and resolving business problems common to lumber and building materials dealers. To attain these ends, NLBMDA provides its membership with special service programs including publications and seminars. Additionally, NLBMDA periodically prepares statements and position papers for submission before various congressional committees, prepares informational publications, and expresses its view to Congressmen and federal agency personnel on matters affecting the lumber and allied industries.

13. A substantial number of NLBMDA's corporate association members are also members of at least one or more separate and distinct trade associations, and a substantial percentage of the members which in turn constitute the membership of the corporate associations are also members of at least one or more separate and distinct trade associations. This overlapping membership stems from the diversity of business interests of NLBMDA's members and underlying members.

14. Plaintiff, the Lumber Dealers Political Action Committee ("LuDPAC"), is a duly organized not-for-profit, non-partisan political action committee formed in 1975 by the National Lumber and Building Material Dealers Association in conformity with the applicable provisions of the Federal Election Campaign Act of 1971. LuDPAC is designed to assist, through financial contributions, the campaign funds of those candidates for election or re-election to the United States Senate and House of Representatives who have demonstrated support for the principles of private enterprise and sound fiscal and monetary policies for which LuDPAC and NLBMDA stand.

15. All of the Plaintiffs are engaged in the exercise of First Amendment rights of freedom of speech and association described above. In order to finance these activities, the Plaintiff political action committees solicit voluntary contributions from a variety of individual sources. The funds realized from this solicitation activity constitute the primary source of revenue for these committees. Moreover, the ability of, and the extent to which, the political action committees are able to contribute to candidates for federal offices and to otherwise engage in protected First Amendment activity is directly related to the extent to which they can solicit contributions. The solicitation activities of the Plaintiffs are non-partisan in nature and are directed to the dissemination of ideas, opinions, and political information about matters of vital national and regional concern. The scope of Plaintiffs' solicitation activities has been drastically curtailed by certain provisions of the Act.

16. Defendant, the Federal Election Commission, was established by the Federal Election Campaign Act of 1971 (as amended in 1974) (2 U.S.C. § 437c) and the Federal

Election Campaign Act Amendments of 1976, to administer, obtain compliance with, and formulate policy with respect to those Acts and Chapters 95 and 96 of the Internal Revenue Code of 1954. (2 U.S.C. § 437c) (1976).

17. Defendant, Francis R. Valeo, is the duly appointed Secretary of the United States Senate and is, pursuant to the Federal Election Campaign Act Amendments of 1976, an *ex officio* member of the Federal Election Commission. The instant case is brought against Mr. Valeo solely in his official capacity as a member of the Commission.

18. Defendant, Edward Henshaw, is the Clerk of the United States House of Representatives and is, pursuant to the Federal Election Campaign Act Amendments of 1976, an *ex-officio* member of the Federal Election Commission. The instant case is brought against Mr. Henshaw solely in his official capacity as a member of the Commission.

19. Defendant, Vernon Thomson, is the Chairman of the Federal Election Commission. The instant case is brought against Mr. Thomson solely in his official capacity as a member of the Commission.

20. Defendant, Thomas E. Harris, is the Vice-Chairman of the Federal Election Commission. The instant case is brought against Mr. Harris solely in his official capacity as a member of the Commission.

21. Defendants, Neil Staebler, William Springer, Robert O. Tiernan, and Joan D. Aikens, are Commissioners of the Federal Election Commission. The instant case is brought against them solely in their official capacities as members of the Commission.

22. Defendant, Griffin Bell, the Attorney General of the United States of America, is charged under the Federal

Election Campaign Act Amendments of 1976 with the enforcement of certain penal provisions of the Act. Additionally, the Attorney General is empowered to receive reports of apparent violations of the Act from the Commission and to take appropriate action. 2 U.S.C. § 437g *et seq.* (1976).

COUNT I

1-22. As paragraphs 1-22 of Count I, Plaintiffs reallege and incorporate paragraphs 1-22 of the Complaint.

23. Prior to the time the Act became effective on May 11, 1976, one or more of the Plaintiffs had solicited contributions from various employees of its member corporations and from individuals who were not employees of a corporate member. These solicitations were conducted without having obtained prior approval from their corporate members.

24. Section 441b(b)(4)(D) of the Act prohibits a trade association or its political action committee from soliciting contributions from any person unless that person is either a stockholder or an executive or administrative employee of the member corporation. Moreover, § 441b(b)(4)(D) allows such solicitation only "to the extent that it has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one trade association in any calendar year."

25. The ability of the Plaintiffs to communicate with members of the electorate and to provide a focal point for political association among various individuals is in large measure, if not completely, dependent on their ability to solicit contributions from a broad spectrum of the electorate. Additionally, the ability of the Plaintiffs to promul-

gate their views on matters of vital political issues is dependent upon their ability to solicit contributions from interested members of the electorate at large.

26. By depriving Plaintiffs of the ability freely to solicit contributions from a broad spectrum of the electorate, § 441b(b)(4)(D) abridges Plaintiffs' ability to communicate political thoughts and information. And by interposing a prior restraint even on those statutorily permissible communications, § 441b(b)(4)(D) has seriously and profoundly abridged Plaintiffs' rights of freedom of speech and association as well as the rights of their members and the rights of people with similar or related interests to receive from the Plaintiffs communications expressing political views and containing political ideas.

27. The harm wrought by § 441b(b)(4)(D) is actual and not speculative or hypothetical. For example, in 1977, BreadPAC, on at least twenty-seven separate occasions, has been refused permission by ABA-member corporations to solicit contributions from their executive and administrative personnel (and their families). Of the twenty-seven refusals, nine were predicated on the fact that prior approval had already been given to some other trade association's political action committee. The remaining corporate refusals to permit BreadPAC solicitation were predicated largely on the ABA-member corporation's undifferentiated aversion to solicitation activities. While a number of corporations have given their approval to BreadPAC to solicit executive and administrative corporate personnel, thirty corporations have limited the scope of their consent to a miniscule number of specific individuals in the managerial hierarchy while refusing permission to solicit the overwhelming majority of otherwise statutorily permissible solicitees.

28. Likewise, RPAC, also fearing the imposition of civil and criminal sanctions, has ceased soliciting contributions from a large number of individuals whom it formerly solicited with success. This cessation of activity stemmed from § 441b(b)(4)(D)'s prohibition against solicitation of any individual lacking the requisite statutory relationship to a member corporation. Additionally, RPAC has ceased solicitations in the absence of corporate consent even though prior to the enactment of § 441b(b)(4)(D), it had successfully conducted solicitations without such consent.

29. Although RPAC has made numerous prior requests to member corporations for consent to solicit contributions from their executive and administrative personnel, a substantial number, if not the majority, have failed to make any timely response. Consequently, RPAC's solicitation efforts have been seriously curtailed.

30. LuDPAC has experienced similar difficulties. Indeed, so grave have these difficulties proved themselves to be, that LuDPAC has been compelled to abandon almost all solicitation activities.

31. 2 U.S.C. § 441b(b)(4)(D) is an unconstitutional abridgment of Plaintiffs', their members' and their members' employees' rights of freedom of speech and association in that:

(a) By conditioning Plaintiffs' right to communicate on corporate consent, § 441b(b)(4)(D) imposes a prior restraint on the expression of political thoughts and ideas;

(b) Section 441b(b)(4)(D) constitutes an impermissible burden on the right of the Plaintiffs to solicit contributions, thereby resulting in an improper restraint on Plaintiffs' rights to communicate with members of the electorate;

(c) Section 441b(b)(4)(D), by restricting the class of permissible solicitees to stockholders and executive and administrative personnel (and families) of member corporations, impermissibly interdicts Plaintiffs from having the opportunity to associate with anyone other than those defined in the Act;

(d) Section 441b(b)(4)(D) deprives Plaintiffs of the right to freely associate with large segments of the electorate who have or may have an affinity of interest with Plaintiffs, and it prevents that segment of the electorate from having the opportunity to associate with Plaintiffs toward common political ends;

(e) Section 441b(b)(4)(D)'s restriction that only one trade association can solicit the stockholders and executive and administrative personnel of a given member corporation impermissibly and absolutely restricts the communication of political expression by any and all other trade associations and impermissibly curtails the right of Plaintiffs and large segments of the electorate to freely associate with each other.

(f) By impermissibly circumscribing Plaintiffs' solicitation activities, § 441b(b)(4)(D) abridges Plaintiffs' ability to make statutorily permissible contributions to candidates of its choice.

WHEREFORE, Plaintiffs respectfully pray for entry of judgment declaring 2 U.S.C. § 441b(b)(4)(D) unconstitutional in violation of the First Amendment to the Constitution of the United States. Plaintiffs also pray for entry of judgment permanently enjoining the enforcement of 2 U.S.C. § 441b(b)(4)(D).

COUNT II

1-22. As paragraphs 1-22 of Count II, Plaintiffs incorporate and reallege paragraphs 1-22 of Count I.

23. In the alternative, even if the Court concludes that it is permissible to condition Plaintiffs' solicitation activities on each individual member corporation's consent, 2 U.S.C. § 441b(b)(4)(D) nonetheless violates the First and Fifth Amendments in that it is impermissibly vague and fails to provide objective criteria which are to be applied in determining whether or to what extent consent should be granted.

WHEREFORE, Plaintiffs respectfully request entry of judgment declaring 2 U.S.C. § 441b(b)(4)(D) unconstitutional in violation of the First and Fifth Amendments to the Constitution of the United States. Plaintiffs also respectfully request entry of judgment permanently enjoining the enforcement of 2 U.S.C. § 441b(b)(4)(D).

COUNT III

1-22. As paragraphs 1-22 of Count III, Plaintiffs incorporate and reallege paragraphs 1-22 of Count I.

23. Sections 441b(b)(4)(A) and (B) of the Act provide, in essence, that labor union political action committees may solicit the union membership with unlimited frequency and without obtaining prior consent from any third person. Similarly, the political action committees of membership organizations (such as the American Trial Lawyers Association, the Association of Life Underwriters, etc.), and the political action committees of corporations (other than trade associations) may solicit, with unlimited frequency and without prior consent, the membership and the executive and administrative personnel (and their families). Finally, corporations may solicit, twice yearly by mail, all non-executive or administrative employees and, perhaps more importantly, labor organizations may solicit, twice yearly by mail, all executive or administrative employees and all shareholders of those corporations with which they have collective bargaining agreements.

24. 2 U.S.C. § 441b(b)(4)(D) imposes substantially dissimilar restrictions on Plaintiffs in that they cannot, under any circumstances, solicit their members' non-executive or non-administrative personnel (or their families), and they cannot solicit executive or administrative personnel without the prior consent of a member corporation which has not given previous consent to another trade association.

25. But for the restrictions imposed by § 441b(b)(4)(D), and their fear of the Act's civil and criminal sanctions, the Plaintiffs would, as they have in the past, engage in substantially more expanded solicitation activities than they are presently conducting.

26. Section 2 U.S.C. §441b(b)(4)(D) arbitrarily, capriciously, and invidiously discriminates against trade association political action committees in violation of the Fifth Amendment to the Constitution of the United States.

WHEREFORE, Plaintiffs respectfully request entry of judgment declaring 2 U.S.C. § 441b(b)(4)(D) unconstitutional in violation of the Fifth Amendment to the Constitution of the United States. Plaintiffs also pray for judgment permanently enjoining the enforcement of 2 U.S.C. § 441b(b)(4)(D).

COUNT IV

1-22. As paragraphs 1-22 of Count IV, Plaintiffs incorporate and reallege paragraphs 1-22 of Count I.

23. 2 U.S.C. §§ 441b(a) and (b)(2) prohibit trade associations from unilaterally making independent contributions of funds, voluntarily contributed from individuals, to express their opinion about the fitness, *vel non*, of a candidate for federal office or to express, in connection with any federal election, their views on matters of politi-

cal importance unless such communications are addressed solely to their own executive and administrative personnel.

24. But for the restrictions imposed by § 441b and their fear of the civil and criminal sanctions imposed by the Act, Plaintiffs would make such expenditures for the promulgation of political thought and political ideas.

25. Sections 441b(a) and (b)(2) constitute an unconstitutional abridgment of Plaintiffs' First Amendment rights of freedom of speech and association.

WHEREFORE, Plaintiffs respectfully pray for judgment declaring 2 U.S.C. §§ 441b(a) and (b)(2) unconstitutional in violation of the First Amendment to the Constitution of the United States. Plaintiffs also respectfully pray for judgment permanently enjoining the enforcement of 2 U.S.C. §§ 441b(a) and (b)(2).

COUNT V

1-22. As paragraphs 1-22 of Count V, Plaintiff, LuDPAC, incorporates and realleges paragraphs 1-22 of Count I of the Complaint.

23. The Act does not define the phrase "trade association" as used in 2 U.S.C. § 441b(b)(4)(D). Consequently, LuDPAC is unable to ascertain whether, for purposes of the restrictions on solicitation contained in § 441b(b)(4)(D) of the Act, the range of statutorily permissible solicitees includes only the executive and administrative personnel of NLBMDA's thirty corporate-trade association members or whether it includes the administrative and executive personnel of the corporate members which constitute the membership of NLBMDA's corporate-trade association members or both.

24. As a result of the Act's vagueness, and fearing the Act's civil and criminal penalties, LuDPAC has refrained from engaging in solicitation activities.

WHEREFORE, Plaintiffs, NLBMDA and LuDPAC, pray for judgment declaring 2 U.S.C. § 441b(b)(4)(D) of the Act unconstitutional in violation of the First and Fifth Amendments to the Constitution of the United States. Plaintiffs also pray for judgment permanently enjoining enforcement of 2 U.S.C. § 441b(b)(4)(D).

Respectfully submitted,

/s/ *Jerome H. Torshen*
Jerome H. Torshen

/s/ *Jeffrey Cole*
Jeffrey Cole

/s/ *Richard J. Carmel*
Richard J. Carmel

OF COUNSEL:
JEROME H. TORSHEN, LTD.
11 South LaSalle Street
Suite 1625
Chicago, Illinois 60603

RICHARD J. CARMEL
55 East Monroe Street
Suite 4316
Chicago, Illinois 60603

LAWRENCE B. KRAUS
STANLEY T. KALECZYC
FREDERICK J. KREBS
1615 H. St. N.W.
Washington, D.C. 20062

NATIONAL CHAMBER LITIGATION
CENTER INC.
1615 H. St. N.W.
Washington, D.C. 20062

§441b. Contributions or expenditures by national banks, corporations or labor organizations

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or for any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b) (1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section, and section 12(h) of the Public Utility Holding Company Act (15 U.S.C.

79*l*(h)), the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include--

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(B) non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful—

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job

discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4) (A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written

solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, for soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

§441c. Contributions by Government contractors

(a) It shall be unlawful for any person—

(1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any de-

partment or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of—

(A) the completion of performance under; or

(B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land or building,

directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

(b) This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation or labor organization, membership organization, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 441b prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 441b applies to a corporation, labor

Answer to Complaint

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Civil Action No. 77 C 947

BREAD POLITICAL ACTION COMMITTEE, et al.,
Plaintiffs

v.

THE FEDERAL ELECTION COMMISSION, et al.,
Defendants

ANSWER

Defendant Federal Election Commission, et al., answers the numbered paragraphs of the complaint as follows:

1. Defendant admits allegations 1 and 2.

2. Defendant denies allegation 3 and reasserts the arguments set forth in the Motion to Dismiss.

3. Defendant denies allegation 4 and reasserts the arguments set forth in the Motion to Dismiss.

4. Defendant admits allegation 5 but avers that the review procedures set forth in 2 U.S.C. §437h are not available here and reasserts its arguments set forth in the Motion to Dismiss.

5. Defendant admits that plaintiff BreadPAC is registered with the Federal Election Commission, and is without knowledge or information sufficient to form an opinion as to the truth of the balance of allegation 6.

6. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 7.

7. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 8, but avers that the phrase "identified individuals acting on their own behalf" affords an identification of solicitees that is factually inadequate as regards the application of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 *et seq.*, (hereinafter the "Act"), and further avers that contributions made to individual "candidates for Federal office whose views are most harmonious with the goals of BreadPAC and the ABA" are not non-partisan.

8. Defendant is without knowledge or information sufficient to form an opinion as to the truth of so much of allegation 9 as asserts the purposes of plaintiff National Restaurant Association.

9. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 10.

10. Defendant admits that plaintiff Restaurateurs Political Action Committee is registered with the Federal Election Commission, and is without knowledge or information sufficient to form an opinion as to the truth of the balance of allegation 11.

11. Defendant is without knowledge or information sufficient to form an opinion as to so much of allegation 12 as asserts the federated nature and the purposes and activities of plaintiff National Lumber and Building Materials Dealers Association.

12. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 13.

13. Defendant admits that plaintiff Lumber Dealers Political Action Committee is registered with the Federal

Election Commission, and is without knowledge or information sufficient to form an opinion as to the truth of the balance of allegation 14.

14. Defendant is without knowledge or information sufficient to form an opinion as to the truth of so much of allegation 15 as asserts the primary source of committee revenue, the identity of solicitees, and the voluntariness of their contributions. Defendant denies the balance of allegation 15 and disputes the characterization as First Amendment activities of all the activities described in plaintiffs' allegations 1 through 14.

15. Defendant admits allegation 16.

16. Defendant admits at the time of the filing of the complaint, F. R. Valeo was the Secretary of the Senate, but avers that, since that time, J. S. Kimmitt has succeeded him in that post.

17. Defendant admits allegation 18.

18. Defendant admits that, at the time of the filing of the complaint, Vernon W. Thomson was the Chairman of the Federal Election Commission and avers that, since that date, Thomas E. Harris has succeeded him in that post, and that Mr. Thomson remains a member of the Commission.

19. Defendant admits that, at the time of the filing of the complaint, Thomas E. Harris was Vice Chairman of the Commission and avers that, since that date, Mr. Harris has assumed the post of Chairman.

20. Defendant admits allegation 21 and avers that, since the time of the filing of the complaint, Joan D. Aikens has assumed the post of Vice Chairman of the Commission.

21. Defendant admits so much of allegation 22 as asserts that the Attorney General is empowered to take appropriate action on referrals of apparent statutory violations by the Federal Election Commission, but avers that enforcement of the Act falls within the primary jurisdiction of the Commission.

COUNT I

22. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 23.

23. Defendant denies that allegation 24 accurately states the statutory proscription. Section 441b(b)(4)(D) permits trade associations a limited exception to the general rule that corporation funds cannot be used to solicit contributions to a political committee which supports federal candidates.

24. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 25.

25. Defendant denies allegation 26.

26. Defendant denies allegation 27, restates the assertions made in paragraph 23, *supra*, page 4, and avers that, under plaintiffs' own allegations, factors other than the prohibitions of any provision of the Act operated to restrict plaintiff BreadPAC's solicitation of the executive and administrative personnel of certain corporations.

27. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 28 and restates the assertions made in paragraph 23, *supra*, page 4.

28. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 29.

29. Defendant is without knowledge or information sufficient to form an opinion as to the truth of allegation 30.

30. Defendant denies allegation 31 and restates the assertions made in paragraph 23, *supra*, page 4.

COUNT II

31. Defendant denies allegation 23, page 12 of the complaint.

COUNT III

32. Defendant denies so much of allegation 23, page 13 of the complaint, as asserts that (1) the political action committees of corporations may solicit, "with unlimited frequency and without prior consent," their "membership," and (2) corporate trade associations may not solicit their executive and administrative personnel (and their families) "with unlimited frequency and without prior consent," and admits the balance of allegation 23.

33. Defendant restates the assertions set forth in paragraph 23, *supra*, page 4, and admits, as respects allegations 24, page 13 of the complaint, that the Act makes unlawful the solicitation by a trade association of its member corporations' non-executive and non-administrative personnel (or their families) and the solicitation of its member corporations' executive or administrative personnel without the member corporations' specific approval, and avers that such restrictions upon trade associations use and transfer of corporate general treasury money are substantially consistent with those of the restrictions alleged in plaintiffs' allegation 23, page 13, of the complaint which are admitted by defendant.

Answer to Complaint

34. Defendant restates the assertions set forth in paragraph 23, *supra*, page 4, and is without knowledge or information sufficient to form an opinion as to the truth of allegation 25, page 14 of the complaint.

35. Defendant denies allegation 26, page 14 of the complaint.

COUNT IV

36. Defendant denies allegation 23, page 14 of the complaint, and avers that the Act permits a trade association to make contributions from its separate segregated fund to candidates, candidates' authorized committees or national political party committees, and to use its general treasury funds to communicate with its own executive and administrative personnel.

37. Defendant is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegation 24, page 15 of the complaint.

38. Defendant denies plaintiffs' allegation 25, page 15 of the complaint.

COUNT V

39. Defendant admits so much of plaintiffs' allegation 23, page 15 of the complaint, as asserts that the Act does not define the phrase "trade association," and is without knowledge or information sufficient to form a belief as to the truth of the balance of plaintiffs' allegation 23, page 15.

40. Defendant denies plaintiffs' allegation 24, page 16 of the complaint.

AFFIRMATIVE DEFENSES

1. This court lacks subject matter jurisdiction over the complaint.

2. Section 441b(a)(4)(D) of the Act imposes no prior restraint upon the exercise of rights protected by the First Amendment of the Constitution.

3. Section 441b of the Act is constitutional in all respects.

/s/ William C. Oldaker

WILLIAM C. OLDAKER
General Counsel

/s/ Charles N. Steele

CHARLES N. STEELE
Associate General Counsel

/s/ Joan Bernott

JOAN BERNOTT
Attorney

Attorneys for the
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
(202) 523-4060

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 77C947

BREAD POLITICAL ACTION COMMITTEE, et al.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,

Defendants.

MOTION FOR LEAVE TO AMEND THE COMPLAINT

Plaintiffs, by their attorneys, Jeffrey Cole and Stanley T. Kaleczyc, move for entry of an order allowing Plaintiffs to Amend the Complaint as follows:

1. Delete the entire second sentence of Paragraph 9 and in its place insert the following:

> "Formed in March 1939, its corporate purposes are to unite organizations and persons engaged in the foodservice industry or related activities in the United States in the furtherance by all proper and legitimate agencies and means of the following purposes and objects:
>
> (a) To maintain a high standard of integrity and efficiency in the conduct of the business of the foodservice industry.

(b) To foster and promote a feeling of fraternity and goodwill among its members and to advance on broad equitable lines the welfare of the foodservice industry.

(c) To maintain the foodservice industry among the respected professions and industries.

(d) To oppose improper methods and unethical practices inimical to the right conduct of business so that honorable and fair competition may prevail.

(e) To promote harmonious relations with allied industries in order that food products may be sold to consumers at the lowest possible cost.

(f) To assist in the enactment and enforcement of local, state, and federal pure food and sanitation laws.

(g) To disseminate useful information and inspire members to educate themselves in the scientific and practical features of their business.

(h) To encourage the participation of its members in community and civic activities.

(i) To hold annually, when practicable, in conjunction with its convention as an education feature, an exposition or exhibition of equipment, supplies, and so forth, necessary in conducting the business of the foodservice industry.

(j) To direct leadership in national affairs pertaining to the foodservice industry and to act as spokesman for state and local associations whose members are engaged in the foodservice industry and who have authorized the National Restaurant Association to represent them in federal matters.

(k) To unite with organizations engaged in the food-service industry in Canada, Mexico, and other countries in the furtherance of communications, industry cooperation, and fellowship.

2. Delete the first sentence of Paragraph 10 and in its place insert the following:

"The NRA is composed of approximately 10,000 member firms, both corporate and non-corporate."

3. Add to Paragraph 31 of Count I, the following:

"(g) Neither §441(b)(4)(D) nor any other provision or the Act defines the term solicitation, and individuals of ordinary intelligence cannot ascertain its meaning. Consequently, §441b(b)(4)(D) is unconstitutionally vague."

"(h) Section 441b(b)(4)(d) is unconstitutionally overbroad in that it includes activities which are protected by the First and Fifth Amendments."

Respectfully submitted,

/s/ Jeffrey Cole
Jeffrey Cole

OF COUNSEL:
Jeffrey Neal Cole, Ltd.
180 N. LaSalle Street
Suite 3100
Chicago, Illinois 60601
(312) 782-8300

Stanley T. Kaleczyc
Director, National Chamber Litigation Center
1615 H Street, N.W.
Washington, D.C. 20062
(202) 659-6219

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CIVIL ACTION NO. 77 C 947

BREAD POLITICAL ACTION COMMITTEE, et al.,
Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,
Defendants.

ANSWER TO PLAINTIFFS' AMENDMENTS TO THEIR COMPLAINT

Defendant Federal Election Commission ("Commission") answers the amended paragraphs to the complaint as follows:

1. Defendant is without knowledge or information sufficient to form an opinion as to the truth of so much of the amended allegation 9 as asserts the purposes of the plaintiff National Restaurant Association.

2. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the amended allegation 10.

3. Defendant denies amended allegation 31 of Count I.

Respectfully submitted,

/s/ William C. Oldaker
William C. Oldaker
General Counsel

/s/ Charles N. Steele
Charles N. Steele
Associate General Counsel

/s/ Lawrence M. Noble
Lawrence M. Noble
Attorney

/s/ Patricia F. Bak
Patricia F. Bak
Attorney

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463
(202) 523-4175

Certificate of Service

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS
EASTERN DIVISION

CIVIL ACTION NO. 77 C 947

BREAD POLITICAL ACTION COMMITTEE, et al.,
Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,
Defendants.

CERTIFICATE OF SERVICE

This is to certify that I caused to be served by first-class mail, postage prepaid on May 31, 1979, a copy of the Defendant Federal Election Commission's Answer to Plaintiff's Amendments to Their Complaint to the following counsel:

Jeffrey Cole, Esq.
180 N. La Salle Street
Suite 3100
Chicago, Illinois 60601

Thomas P. Sullivan, Esq.
United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604

Stanley T. Kaleczyc, Jr.
1615 H Street, N.W.
Washington, D.C. 20062

/s/ Phyllis C. Baytop
Phyllis C. Baytop

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CIVIL ACTION NO. 77 C 947

BREAD POLITICAL ACTION COMMITTEE, et al.,
Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,
Defendants.

FINDINGS OF FACTS

1. Most trade associations are incorporated.

2. The members of trade associations are business associations involved with broadly similar commodities, products and services and who have common and mutual political, economic and social interests. Depending on the industry in question and the policy of the trade association, many, if not most, members of trade associations are incorporated.

3. Federated associations are made up of members who are trade associations rather than business firms. The constitutent associations may be regional associations, or they may be associations whose membership is drawn from different product groups within a generic industry. Most federated associations are incorporated. Most members of federated associations are incorporated. (Hereinafter the term trade association shall include federated associations).

Findings of Fact

4. The principal functions of a trade association or a federated association are providing the membership with the support, information and other aid that will enable the members to strengthen their position in the society and to effectively advocate their interests. To these ends, trade associations and federated associations undertake such activities as government relations, lobbying, public relations, education, information dissemination, advertising, research, standardization and statistics.

5. The activities of trade associations consist, in part, of providing to members information concerning how proposed and enacted legislation, regulations, and other governmental actions affect their business and how the members can participate in the legislative process. Trade associations also present the members' views to legislators and regulators, and sometimes to the public, in order that the members' views regarding the drafting and enactment of legislation, regulations and other government actions can be taken into consideration.

6. The activities of trade associations include, but are not limited to: lobbying on specific legislation; presenting testimony to legislative committees; presenting testimony to administrative agencies; preparing comments on proposed regulations for submission to administrative agencies; meeting with regulators and legislators to present the industry's viewpoint on specific matters; informing the membership of the existence of issues or pending legislation or regulations.

7. In general, the associations obtain their funds for most of the activities they undertake from fees, dues and other assessments paid by the membership who receive the services of the association.

Findings of Fact

8. Trade associations, including some federated trade associations, have established and pay the administration and solicitation expenses of separate segregated funds ("political action committees" or "political committees") pursuant to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* The administration and solicitation expenses of these committees may be paid for from the general treasury of the association, which money comes primarily from membership dues.

9. In many instances, business corporations belong to numerous trade associations which advocate views and provide services for the different business concerns which the corporations have.

10. According to Federal Election Commission* Disclosure Series No. 8: Corporate-Related Political Committees Receipts and Expenditures, 1976 Campaign, September 1977, as of January 1, 1975, there were 89 political committees registered as connected to corporations. These reports also show that between January 1, 1975 and May 10, 1976, 208 committees connected to corporations registered with the Commission; that between May 11, 1976 (which was the effective date of the 1976 amendments to the Act) and December 31, 1976, 153 political committees connected to corporations registered with the Commission. Between January 1, 1975 and December 31, 1976, the political committees connected to corporations had gross receipts of $6,782,322 and expenditures of $5,803,415.

11. According to published figures compiled by the Commission which were released on January 24, 1979, in

---

* Referred to interchangably with "FEC" or "Commission".

the 1977-1978 campaign (from January 1, 1977, through November 27, 1978) there were 837 active political committees connected to corporations. These figures also show that the adjusted receipts (transfers made from affiliated committees after October 23, 1978 are not included) for these political committees was $17.1 million; adjusted disbursements (transfers to affiliated committees after October 27, 1978 are not included) for these political committees was $15.3 million and contributions to federal candidates made by these committees totaled $8.9 million (not including contributions made after October 23, 1978).

12. According to the figures compiled by the Commission based on reports filed with the Commission, as of December 31, 1976, there were 211 political committees connected to trade associations registered with the Commission; between January 1, 1977 and December 31, 1977, 51 additional political committees connected to trade associations registered with the Commission; between January 1, 1978 and December 31, 1978, 79 additional political committees connected to trade associations registered with the Commission, and that between January 1, 1979 and March 31, 1979, 11 additional political committees connected with trade associations registered with the Commission.

13. According to the figures compiled by the Commission and based on reports filed with the Commission, between January 1977 and March 1979, political committees connected to trade associations had gross receipts of $10,112,364 and made contributions totalling $5,908,245.

14. Published figures compiled by the Commission which were released on January 24, 1979, also show that two trade associations are among the top 10 non-party political committees in terms of gross receipts (minus transfers in from affiliated committees), gross disbursements (minus

transfers to affiliated committees) and total amount of cash contributed to candidates for the period from January 1, 1977 to November 27, 1978.

15. Published figures compiled by the Commission which were released on January 24, 1979, also show that between January 24, 1977 and November 27, 1978, all non-party political committees raised $77.3 million and spent $75.6 million.

16. According to Federal Election Commission Disclosure Series No. 10: Labor-Related Political Committees Receipts and Expenditures, 1976 Campaign, January 1978, as of January 1, 1975, there were 201 political committees connected to labor organizations registered with the FEC. Between January 1, 1975 and May 10, 1976, 63 additional committees connected to labor organizations registered with the Commission; between May 11, 1976 (which was the effective date of the amendments to the Act) and December 31, 1976, 33 additional political committees connected to labor organizations registered with the Commission. Between January 1, 1975 and December 31, 1976, the political committees connected to labor organizations had gross receipts of $20,578,524 and expenditures of $20,326,500.

17. According to the figures compiled by the Commission based on reports filed with the Commission, between January 11, 1975 and December 31, 1976, there were 230 political committees registered with the Commission which were connected to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), its affiliates, and related unions.

18. According to the figures compiled by the Commission and based on reports filed with the Commission, be-

tween January 1, 1975 and December 31, 1976, political committees connected with the AFL-CIO and its affiliates (excluding committees connected to AFL-CIO related unions) had gross receipts of $15,137,818, and gross expenditures of $15,361,303. The AFL-CIO itself made contributions totalling $935,723.

19. According to published figures compiled by the Commission which were released on May 9, 1979, in the 1977-1978 campaign (from January 1, 1977, through December 31, 1978) there were 280 active political committees connected to labor organizations. These figures also show that the adjusted receipts for these political committees was $19.8 million; adjusted disbursements for these political committees was $18.9 million and contributions to federal candidates made by these committees totaled $10.3 million.

20. Published figures compiled by the Commission which were released on January 24, 1979, also show that two labor organizations are among the top 10 non-party political committees in terms of gross receipts (minus transfers in from affiliated committees) and gross disbursements (minus transfers to affiliated committees). Six labor organizations are among the top 10 non-party political committees in terms of total amount of cash contributed to candidates for the period from January 1, 1977 to November 27, 1978. These figures also show that between January 1, 1977 and November 27, 1978, all non-party political committees raised $77.3 million and spent $75.6 million.

21. Membership in American labor unions declined by 767,000 or 3.8% between 1974 and 1976. Total union membership dropped from 20.2 million in 1974 to 19.4 million in 1976. Union membership as a percentage of the total labor force has been declining steadily in recent years, dropping from 21.7% in 1974 to 20.1% in 1976.

Findings of Fact

In 1975, the toal number of individuals who owned shares of stock in American corporations was 25,270,000.

22. According to published figures compiled by the Commission which were released on May 9, 1979, in the 1977-1978 campaign (from January 1, 1977, through December 31, 1978) there were 254 non-connected political committees (i.e., political committees which are independent of any other organizations). These figures also show that the adjusted receipts for these non-connected political committees was $15.4 million; adjusted disbursements for these political committees was $16.8 million and contributions to federal candidates made by these committees totaled $2.5 million.

23. Published figures compiled by the Commission which were released on January 24, 1979, also show that four unconnected political committees are among the top 10 non-party political committees in terms of gross receipts (minus transfers in from affiliated committees) and gross disbursements (minus transfers to affiliated committees).

24. The National Lumber and Building Material Dealers Association ("NLBMDA") is a federation of twenty-seven (27) local, state and regional associations (hereinafter referred to as the "federateds"), which in turn represent 15,000 retail lumber and building material dealers across the nation (hereinafter referred to as "retail dealers"). These retail dealers are not members of the NLBMDA. Incorporated and existing pursuant to the laws of the State of Illinois, NLBMDA is devoted to analyzing and resolving business problems of the lumber and building material industry.

25. The federated members of the NLBMDA, as well as many of the retail dealers are incorporated. The NLBMDA does not know how many retail dealers are

incorporated since it does not maintain any records regarding the form of organization of the retail dealers. Maintained in the membership records of NLBMDA is information regarding the dues structure of the federateds and the identity of each federated's president, national directors and the dates of their respective conventions.

26. A substantial number of the federated members of the NLBMDA belong to one or more trade associations. Retail dealers also typically belong to one or more trade associations, including but not limited to:

a. National Forest Products Association

b. National Association of Homebuilders

c. American Retail Federation

d. Local, state, regional or national Chamber of Commerce

27. The NLBMDA does not possess precise information regarding the extent to which federated members belong to one or more other trade associations, nor does the NLBMDA possess precise information regarding the extent to which retail dealers belong to one or more other trade associations.

28. In 1969, in a survey conducted by the NLBMDA, 27 percent of the retail dealers who responded stated that they were members of one or more other trade association other than the federateds.

29. In addition, retail dealers may belong to more than one federated member of NLBMDA. Because NLBMDA does not maintain any roster of the membership of its federated members, NLBMDA is not aware of the number of retail dealers who hold multiple membership in federateds.

Findings of Fact

30. The NLBMDA is governed by the Board of Directors, which is composed of two persons selected by each of the federated members, the past two national presidents, the officers of the Association, the chairman of the Legislative and Government Agency Affairs Advisory Committee and the chairman of the Industrial Development Division Advisory Committee. Each federated member has total autonomy in the selection of the two individuals who will represent the federated on the NLBMDA Board.

31. The officers of NLBMDA which are elected by the Board of Directors, are the Chairman of the Board of Directors, the President, the First Vice-President, the Second Vice-President, the Third Vice-President, the Secretary, the Treasurer, and the Executive Vice-President. With the exception of the Executive Vice-President, who is the chief salaried employee of the Association, the members of the Board of Directors receive no compensation from the NLBMDA for their service on the Board. The Board normally meets two (2) times each year, although the by-laws only provide for an annual meeting of the Board.

32. The Executive Committee of the NLBMDA, which is elected by the Board of Directors, is charged with the responsibility of overseeing the operations of the Association between meetings of the Board of Directors. The recommendations of the Executive Committee are ultimately decided upon and implemented by the Board of Directors. The executive Committee meets at the call of the President or upon the written request of 3 of its members, with no required minimum number of meetings per year.

33. With the exception of the Executive Vice-President as stated in paragraph 31, *supra*, no compensation is paid by NLBMDA to members of the Executive Committee for services which they perform.

Findings of Fact

34. The officers are selected once a year by vote of the membership of the Association as represented by the Board of Directors, subsequent to nomination by a Nominating Committee. The Nominating Committee is composed of individuals representing retail dealers and past presidents of NLBMDA. The chairman and members of the Nominating Committee are selected by the President of the NLBMDA.

35. Within the Board of Directors, votes of the federated members are weighted. The formula for the weighing of votes is grounded upon the number of retail dealers within each federated. As illustrated by the following table, there is a direct relationship between the size of federated's membership and the number of votes which each federated has on the Board.

NLBMDA BOARD OF DIRECTORS WEIGHTED VOTING FORMULA — 1978

	NUMBER OF RETAIL DEALERS IN EACH FEDERATED ASSOCIATION	NUMBER OF FEDERATEDS IN EACH CATEGORY	NUMBER OF VOTES
(1)	1-75	0	2
(2)	75-125	6	4
(3)	126-300	7	7
(4)	201-300	4	7
(5)	301-400	3	8
(6)	401-500	0	*
(7)	501-600	2	13
(8)	601-700	1	15
(9)	701-800	1	18
(10)	800+	3	20

* Since there are no federateds in this category, it is not possible to calculate the exact number of votes which any federated in that category would have.

Findings of Fact

36. NLBMDA has two operating divisions: the Legislation and Governmental Agency Affairs Division ("L&GAA") and the Industrial Development Division ("IDD"). It is through these two Divisions that services are provided by NLBMDA.

37. The L&GAA Division, has within its purview the overseeing of all legislative activities of the Association, as well as all regulatory agency developments which may affect the industry.

38. The L&GAA Advisory Committee oversees the operations of the L&GAA Division. This Committee is comprised of eleven (11) persons: eight (8) managing officers of federated members, the chairman of the IDD Advisory Committee, a Vice President who serves as liaison to the officers of the Association, and the President of the Association, who is an *ex officio* member of the Committee. As provided in the by-laws, the managing officers who are members of this Committee are selected by the President of the NLBMDA from a slate of candidates proposed for selection by a group consisting of all federated managing officers before or during the Annual Meeting of the Board of Directors.

39. The other committees within the L&GAA Division are the Codes Committee, which deals with codes and building standards, and special study committees which are convened from time-to-time.

40. The IDD provides retail dealer-oriented business management education services. The IDD Advisory Committee oversees the operation of this Division. Other committees within the Division include the Marketing and Merchandising Committee, the Business Management Committee, the Research and Development Committee, the

Transportation and Materials Handling Committee, and the Manufacturers' Council.

41. The special services provided by the NLBMDA to its members include the following:

a. Legislation and government agency affairs activities

b. Maintaining liaison with other national organizations

c. Annual convention

d. Annual legislative meeting

e. Educational publications

42. In effectuating its corporate purposes, the NLBMDA, *inter alia,* informs and attempts to mobilize its federated members with regard to a variety of issues before Congress and regulatory agencies.

The identification and selection of those issues which are of concern to lumber and building material dealers is achieved by consideration of the views of the NLBMDA federated members and their retail dealer members, communicated directly to the NLBMDA or through the various committees of the NLBMDA.

43. The NLBMDA also finances through registration fees and dues an annual legislative meeting in the Spring for members. At the legislative meeting, those in attendance participate in briefings conducted by the NLBMDA staff and others concerning pending or proposed legislative and regulatory matters of concern to the industry, and are encouraged to meet independently with their congressional delegations to discuss these matters and any other topics of personal concern to the attendees.

Findings of Fact

44. In addition, the NLBMDA finances from dues the publication and distribution of "Washington Update" which is a legislative newsletter of the L&GAA Division. "Washington Update" is circulated to approximately 178 persons including, but not limited to, the 27 managing officers of the federateds, past presidents of the NLBMDA, members of the trade press, former Executive Vice-Presidents of the Association, certain association colleagues and several corporate representatives.

45. A second newsletter, "Dealer", which addresses industrial and technical concerns, has a circulation of approximately 500. It is provided to retail dealers who contribute specifically to the IDD Division.

46. For each of the years 1974-1978, the NLBMDA was directly interested in an average of twenty (20) pieces of legislation.

47. The NLBMDA has employed one part-time consultant who spends an average of 30 hours per week on Association affairs and whose duties include lobbying. He is a registered lobbyist on behalf of the Association. This individual reports to the staff Vice-President for Legislative and Regulatory Agency Affairs and to the Executive Vice-President.

48. The NLBMDA finances the preparation and presentation of its members' views to congressional committees on legislation and issues of interest to the NLBMDA. In addition, the NLBMDA finances the presentation of its views through direct communications with congressional staff people. NLBMDA testimony to committees of the Congress is typically presented by members of the Association who are accompanied by NLBMDA staff.

Findings of Fact

49. The NLBMDA finances the preparation and presentation of its views to administrative agencies on issues of importance to the NLBMDA. The NLBMDA's views are presented to administrative agencies through the filing of comments on rulemaking, testifying at administrative hearings and other contacts with the agencies. In undertaking these activities, the NLBMDA has employed two in-house staff persons and has hired outside consultants.

50. The approximate budgets of the NLBMDA for the years indicated is as follows:

	TOTAL BUDGET	L&GAA DIVISION BUDGET
1974	313,000	168,000
1975	327,000	174,000
1976	359,000	189,000
1977	384,000	200,000
1978	423,000	218,000
1979	456,000	228,000

51. LuDPAC is the separated segregated fund established in January 1976 and administered by the NLBMDA. LuDPAC is duly registered with the Federal Election Commission.

In June, 1976 LuDPAC ceased the solicitation and making of contributions and expenditures.

52. NLBMDA pays the costs of administration and solicitation of voluntary contributions to LuDPAC.

53. As reflected in the by-laws of LuDPAC, the purposes of LuDPAC are to aid by campaign contributions those publicly announced candidates for reelection to the Senate or to the House of Representatives, who support the principles of private enterprise and sound government

fiscal and monetary policies, and who are supportive of the objectives of the industry.

54. In order to effectuate its purposes, LuDPAC is dependent upon the receipt of voluntary contributions which it uses to make contributions to candidates for Federal office. For example, the original January 1976 By-Laws of LuDPAC provided as follows:

> "Eligibility for active membership shall be available to all businessmen, employees, professionals and others in the retail lumber and building material distribution industry including those directly or indirectly associated with lumber and building material production and distribution, home building, mortgage lending, community development, building and construction, and related industry activities."

Any individual who contributed $100 or more to LuDPAC was a member for the calendar year in which the contribution was made.

55. In the Spring of 1976, prior to May 11, LuDPAC undertook its one and only campaign to solicit voluntary contributions. This solicitation consisted of the following:

a. The Chairman of LuDPAC spoke at a meeting of the Board of Directors of the NLBMDA at which some 70 persons were present. He spoke about LuDPAC, its purposes, and goals, and its importance to the industry and the political process. He also encouraged participation in LuDPAC.

b. The Chairman of LuDPAC spoke at the NLBMDA Legislative Conference at which approximately 500 persons, the majority of whom were retail dealers, were present. He spoke about LuDPAC, its purposes and goals, and its importance to the industry and the political process. He also encouraged the audience to participate in LuDPAC by joining as members of LuDPAC.

c. LuDPAC sent a mailing to the then 30 managing officers of the federated members of NLBMDA which requested that they distribute to their dealer members the solicitation pamphlets of LuDPAC.

d. LuDPAC sent a mailing of approximately 8,000 LuDPAC solicitation pamphlets to those managing officers of the federated members who, in response to the request detailed above, had agreed to distribute LuDPAC pamphlets to their retail dealer members.

56. Thus, the major solicitation activity of LuDPAC, prior to May 11, 1976, was directed to the retail dealers who are members of the various federated associations, whose membership records are not maintained by either NLBMDA or LuDPAC.

57. LuDPAC has no record of how many retail dealer members received the LuDPAC pamphlet, nor does LuDPAC know how many were actually solicited for voluntary contributions to LuDPAC.

58. After the effective date of the 1976 Amendments to FECA* acting upon the advice of counsel, believing that it was not able to determine which persons, if any, LuDPAC could solicit pursuant to those Amendments, other than the approximately 40 executive or administrative personnel of the federated members, and fearing the imposition of civil and criminal penalties for any violation of the Act, LuDPAC ceased all solicitation activities, including the distribution of the LuDPAC solicitation pamphlet. And, no solicitation activities have been undertaken by LuDPAC since that time, nor has LuDPAC made any contributions to candidates since October 29, 1976. LuD-

---

* "Federal Election Campaign Act," "FECA" and "Act" are used interchangably herein.

PAC has, however, continued to be registered with the FEC and has filed the requisite reports pursuant to the FEC's regulations.

59. LuDPAC has not requested an Advisory Opinion from the FEC concerning whom they could solicit, nor has LuDPAC done so since the commencement of this action.

60. As a result of the limited solicitation activities undertaken, LuDPAC received voluntary contributions totaling $8,750 in 1976. Contributions to federal candidates and other expenditures by LuDPAC in 1976 totaled $6,234. In 1977, LuDPAC reported no receipts and $60 in disbursements. In 1978, LuDPAC reported no receipts and $88 in disbursements.

61. The solicitation activities, which LuDPAC had terminated upon the advice of counsel and in the belief that it was not able to determine which persons, if any, it could solicit pursuant to the Act (other than the approximately 40 executive or administrative personnel of the federated members), would be resumed. Specifically, LuDPAC would solicit the retail dealers who are members of the federated members of the NLBMDA.

62. In addition, but for the prohibitions contained in Act, the LuDPAC would also solicit all persons attending the annual convention of the NLBMDA, which is attended by the trade press, manufacturers, and other persons who are neither retail dealers nor executive or administrative personnel of the federated members. And, but for the Act, LuDPAC would also solicit contributions from those persons who are neither retail dealers nor executive or administrative personnel of the federated members, who are identified in the original By-laws of LuDPAC as set forth in paragraph 54 *supra*.

Findings of Fact

63. LuDPAC does not know the exact number of persons whom it would solicit, but it estimates the number to be approximately 15,000.

64. In addition, LuDPAC has been informed by eight (8) of its largest federated members who collectively have more than 4,300 retail dealers as their members that, but for the Act, they would supply their respective membership rosters of retail dealers to LuDPAC in order that LuDPAC may undertake solicitation activities directed to the members of the federated members.

65. LuDPAC is governed by a Board of Trustees. The members of the Board of Trustees are presently the five individuals originally appointed by the President of NLBMDA, as the members of the committee which was charged with the responsibility of establishing and organizing LuDPAC.

66. The selection of candidates for federal office who received contributions from LuDPAC was made by the Board of Trustees, acting upon the recommendations and suggestions provided by individual members of the Board of Trustees themselves, the managing officers of the federated associations, and retail dealer and the officers of NLBMDA.

67. The National Restaurant Association ("NRA") is a not-for-profit corporation incorporated pursuant to the laws of the State of Illinois and having its headquarters and executive offices in Chicago, Illinois. Formed in March 1919, its corporate purposes are, *inter alia:*

a. to maintain a high standard of integrity and efficiency in the conduct of the business of the food service industry.

b. to foster and promote a feeling of fraternity and goodwill among its members and to advance on broad equitable lines the welfare of the food service industry.

c. to maintain the food service industry among the respected professions and industries.

d. to oppose improper methods and unethical practices inimical to the right conduct of business so that honorable and fair competition may prevail.

e. to promote harmonious relations with allied industries in order that food products may be sold to consumers at the lowest possible cost.

f. to assist in the enactment and enforcement of local, state, and federal pure food and sanitation laws.

g. to disseminate useful information and inspire members to educate themselves in the scientific and practical features of their business.

h. to encourage the participation of its members in community and civic activities.

i. to hold annually, when practicable, in conjunction with its convention as an education feature, an exposition or exhibition of equipment, supplies, and so forth, necessary in conducting the business of the food service industry.

j. to direct leadership in national affairs pertaining to the food service industry and to act as spokesperson for state and local associations whose members are engaged in the food service industry and who have authorized the National Restaurant Association to represent them in federal matters.

k. to unite with organizations engaged in the food service industry in Canada, Mexico, and other coutries in the furtherance of communications, industry cooperation, and fellowship.

Findings of Fact

68. The NRA has three principal missions: to represent the food service industry, to educate the food service industry, and to promote the food service industry. All the activities of the NRA are designed to effectuate one or more of these missions, all of which, taken together, constitute the services provided to the members of the Association.

69. The following are the categories of membership in the NRA:

a. food service operators

b. suppliers of food, goods or services to the industry

c. persons retired from active service in the industry

d. not-for-profit organizations engaged in food service

e. students in a food service curriculum

f. faculty members in a food service curriculum

g. foreign business organizations which are involved in the industry.

70. The Membership Committee of the NRA may recommend to the Board of Directors of the Association changes in the membership categories. If the Board of Directors approves such changes, they must then be approved by the general membership of the NRA at the annual meeting.

71. Except for foreign business organizations, of which there are approximately 400, only the organizational members of the NRA have voting privileges in the Association, including, but not limited to, the right to vote on all by-laws, changes proposed at the annual meeting of the NRA. All members are entitled to all the services of the NRA, except that foreign business organizations do not have

access to the government affairs services of the Association.

72. The growth in membership of the NRA from 1974 to 1979 has been:

1974	5075 members
1975	5249 members
1976	6508 members
1977	7509 members
1978	9313 members
1979	10,080 members

73. As reflected in the membership information in the possession of the NRA, the vast majority of NRA members are small business organizations. Approximately 95% of the members of the NRA have annual sales of less than $500,000; the Small Business Administration classifies as a small business any food service operator which, during the preceding 3 fiscal years, had average annual receipts of no more than $5.5 million. 13 C.F.R. § 121.3-8 (1978) The NRA does not know the exact number of its members which are small businesses.

74. Based upon its general knowledge of the industry, NRA knows a substantial number of the organization members of the NRA belong to one or more trade associations other than the NRA. The NRA does not know the exact number of its members which belong to one or more other trade associations.

75. In 1976, in a survey conducted by the NRA, of those responding 0.5 percent of the organization members of the NRA said they were members of no other trade associations; 11 percent said they were members of one other association; 31 percent said two; 27 percent said three; and 31 percent said four or more.

Findings of Fact

In 1977, of those responding, 1 percent said they were members of no other trade or professional associations; 7 percent said one; 31 percent said two; 31 percent said three; and 31 percent said four or more.

In 1978, of those responding, 1% said they belonged to no other trade or professional associations; 11 percent said one; 28 percent said two; 27 percent said three; and 33 percent said four or more.

The results of these surveys comprise the only statistical information regarding how many members of NRA belong to other trade or professional associations.

76. Among the other trade associations to which NRA members also belong are:

a. State Restaurant Associations

b. Chamber of Commerce of the United States

c. American Hotel and Motel Association

d. National Federation of Independent Businessmen

e. International Franchise Association

Each of the trade associations enumerated above are independent, autonomous organizations which are not members of the NRA.

77. The dues structure of the NRA is based upon the following criteria:

a. food service operators pay on the basis of food and beverage volume done;

b. suppliers of food, goods or services pay on the basis of volume of business done with the industry;

c. persons retired from active service in the industry pay the minimum dues; $75.00 per year;

d. not-for-profit organizations pay on the basis of volume of business done;

e. students in a food service curriculum pay $10.00 per year;

f. faculty members in a food service curriculum pay $25.00 per year;

g. foreign business organizations pay the minimum dues for organization members ($75.00).

78. In order to determine the amount of dues paid by organization members, the NRA does maintain records regarding this criterion. The NRA does not maintain any records regarding the form of organization of its business members. Accordingly, the NRA does not know how many of its business organization members are corporations, partnerships or sole proprietorships.

79. Further, because the NRA does not maintain any records concerning the form of organization of its business members, the NRA does not know how many persons hold shares of stock in its corporate members. Nor does the NRA know how many persons employed by its member corporations are executive or administrative personnel of those corporations, as those terms are defined in the Federal Election Campaign Act, as amended. 2 U.S.C. § 431 *et seq.*

80. The NRA is governed by a Board of Directors comprised of sixty (60) individuals who represent the food service industry on a geographic basis and on the basis of the type of organizations operated. This ensures that the number of members of the Board of Directors from any geographic area will reflect the size of the NRA membership in that area, and that multi-state food service organizations will also be represented on the Board.

Findings of Fact

81. Members of the Board of Directors receive no compensation from the NRA for their services on the NRA Board, which meets a minimum of four (4) times per year. The Board of Directors is the policymaking body of the NRA.

82. The term of office for a member of the Board of Directors is three (3) years. Any member of the Board of Directors may serve a maximum of three (3) terms.

83. The members of the Board of Directors are nominated by a nominating committee that is composed of members of the Board of Directors. The nominating committee is composed of the immediate past president of the NRA, the immediate past chairman of the nominating committee, and three other members of the Board of Directors appointed by the President of the NRA. The nominations are placed before the Board of Directors for approval. If approved, they are placed before the membership of the NRA at the annual meeting of the Association where they are voted upon and accepted or rejected.

84. As provided in the By-laws of the NRA, members of the Board of Directors must be actively employed in the food service industry in a food service organization, excluding suppliers, manufacturers and other allied members of the industry. The organization which employs the individual must be a member of the NRA.

85. Neither the Board of Directors of the NRA, nor any committee of the Board of Directors of the NRA, nor any other committee of the NRA has any governing responsibilities with relation to the Restaurateurs' Political Action Committee ("RPAC"). RPAC is governed by a Board of Trustees (See 112).

Findings of Fact

86. In addition to the Board of Directors, there are approximately sixteen (16) committees of the NRA whose function is to recommend policies to the Board of Directors of the NRA. The members of these various committees are recommended to the Board of Directors by the President of the NRA; these recommendations may be either approved or disapproved by the Board.

87. The Government Affairs Committee of the NRA is responsible for recommending policy decisions to the Board of Directors regarding the congressional and federal agency activities of the Association, serving as a liaison between the Association and its members and the federal government. The Government Affairs Committee is composed of approximately forty (40) persons who are members or employees of members of the NRA and are selected by the President of the NRA, subject to the approval of the Board of Directors.

88. The Education Committee of the NRA has within its purview the responsibility of generally overseeing the education activities of the Association with its members. The Education Committee is composed of approximately thirty (30) persons who are members or employees of members of the NRA and are selected by the President of the NRA, subject to the approval of the Board of Directors.

89. Implementation of the policies recommended by the Committees of the NRA and adopted by the Board of Directors is achieved through the staff of the Association, working in conjunction with the members.

90. The Government Affairs Department of the NRA is composed of approximately ten (10) staff persons. This Department is specifically responsible for conducting the

congressional and federal agency activities of the Association, serving as a liaison between the Association and its members and the federal government and generally effectuating those policy recommendations of the Government Affairs Committee which are adopted by the Board of Directors of the NRA.

91. In furtherance of these activities, during each of the years, 1976, 1977, 1978, NRA testified before congressional committees approximately twenty (20) separate times. At present, the NRA employs four (4) people who are registered lobbyists and whose job it is to present the NRA's views to congressmen, senators and their staff on specific matters of importance to the NRA and its members. Additionally, the NRA presents the views of its members to executive departments and administrative agencies on matters of importance to the members of the NRA.

92. More generally, the NRA engages in and finances through membership dues activities directed at the dissemination of the views of its members regarding matters of concern to the NRA's membership, such as pending and enacted legislation and public policy issues. To this end, the NRA publishes weekly and monthly reports, letters and brochures. The monthly report is the "NRA News" which reports on all the activities of the Association. The weekly publication is the "NRA Washington Report" which is published on the average of four times a month. Three of the four issues discuss pending public policy issues of importance to the membership; the fourth issue is devoted to a discussion of general economic trends related to the industry. Approximately 20,000 copies of the "NRA" Washington Report" are distributed each week by the NRA. The NRA continuously publishes for its members brochures and prepares letters which contain general

information on the activities of the Association. In addition, to communicate its position on the minimum wage issue, in 1978 the NRA paid for an advertisement concerning this subject in the Washington Post. This is the only time that the NRA has taken out an advertisement in a publication of general circulation concerning pending or proposed legislation.

93. The approximate budgets of the NRA for the years indicated are as follows:

Year	*Total Budget*	*Governmental Affairs Department*
1974	3,500,000	276,000
1975	3,400,000	349,000
1976	4,500,000	549,000
1977	4,900,000	715,000
1978	6,300,000	918,000

94. The Restaurateurs' Political Action Committee ("RPAC") the separate segregated fund of the National Restaurant Association ("NRA"), was organized in 1963 to protect and promote the interests of the food service industry by supporting candidates to the United States Congress who recognize the need for fiscal integrity and the worth and importance of the free enterprise system. NRA pays the costs of administration of and solicitation of voluntary contributions to RPAC.

95. In order to finance these activities, RPAC has solicited voluntary contributions from a number of individdual sources. In 1975 RPAC solicited persons directly or indirectly involved in the food services industry. These persons were typically acquaintances of members of the Board of Directors of the NRA and were solicited without regard to whether such persons or their employers were

members of the NRA, without regard to whether such persons were executive or administrative personnel of member companies.

96. For the calendar years 1968-1977 inclusive, these solicitation activities took the form of inviting persons to buy tickets to attend a banquet held in conjunction with the May annual meeting of the NRA. The form of the verbal invitations depended on the person who made the solicitation, and there was no particular prescribed format. These solicitations involved speaking to prospective contributors to RPAC about what it was RPAC stood for and what its goals were.

97. In 1975, people who were employees of NRA member companies as well as those who were neither members of NRA or executive or administrative personnel of a member company, were solicited to give to RPAC.

98. In 1976, the scope of permissible solicitees was defined by the 1976 Amendments to the Federal Election Campaign Act, specifically § 441b(b)(4)(D). By virtue of the Act, NRA's Board of Directors after May 11, 1976 no longer solicited persons in the manner they previously had.

99. In 1977, subject to the limitations imposed by the Act, RPAC attempted to solicit voluntary contributions via the medium of the sale of tickets ($100 per ticket) to a banquet held in conjunction with the May 1977 annual meeting of the NRA. RPAC has no records of how many people were solicited or how many could have been solicited under the provisions of the Act.

100. In addition, in 1977 RPAC also initiated a general direct mailing to the membership of the NRA which sought permission to solicit voluntary contributions to RPAC.

When and if such permission was granted, a mailing was then sent which solicited voluntary contributions to RPAC. This mailing included a brochure which discussed both RPAC's activities and the importance of RPAC to the industry and to the political process. In addition, some request for individual contributions were made by telephone.

101. The 1977 requests for permission to solicit were sent to 7,509 members of the NRA: 1,087 gave permission to solicit individuals for voluntary contributions; 6,422 denied permission either explicitly or by failure to respond. RPAC has no record of how many failed to respond versus how many specifically denied permission.

102. In complying with the requirements imposed by the Act, RPAC encountered substantial difficulties in selling tickets to the 1977 fundraising banquet. First, because the Act requires that prior permission be obtained from each corporate member of the NRA before RPAC can solicit any executive or administrative personnel of the member company for a voluntary contribution to RPAC, no solicitations could be made by individuals acting on behalf of RPAC until the written responses granting permission were obtained by RPAC. Only at that time—and not before that time—could RPAC inform those individuals (all of whom were members of the Board of Directors of the NRA) who had agreed to make solicitations that they could commence those activities, but only with those individuals whose employers had given the requisite prior permission. This necessitated RPAC's providing to volunteer solicitors a list of whom the solicitor could legally contact. RPAC also advised these solicitors that they were not permitted to solicit voluntary contributions from any other member of the NRA or executive or administrative employees of the NRA corporate member. Some members

of the NRA who had, prior to the effective date of the 1976 Amendments to the Act, sold tickets to the banquet now refused to do so, stating to Brian Harron, Executive Vice-President of NRA, that the restrictions imposed by the Act and their fear of the civil and criminal penalties imposed by the Act made them unwilling to participate in the solicitation activities. Both the number of persons from whom voluntary contributions were solicited and the number of solicitors decreased. RPAC does not know the exact number of persons who were no longer solicited or the exact number of persons who no longer would act as solicitors.

103. In addition, approximately 100,000 individuals attended the 1977 NRA convention, during which event the RPAC banquet was scheduled to be held. Because more than 80,000 of those persons were neither members of the NRA nor executive or administrative personnel of NRA members, and because only 1,087 members of the NRA had given the requisite prior permission, RPAC did not attempt to identify those individuals in attendance at the convention who could be legally solicited by RPAC.

104. Because of the difficulties set forth above which RPAC experienced in its attempts to comply with the requirements imposed by the 1976 Amendments to the Act, and fearing the sanctions imposed by the Act for violations of the Act, the Board of Trustees of RPAC abandoned the fundraising banquet in 1978. Solicitation activities for 1978 took the form of a direct mail campaign, supplemented by a telephone solicitation program. At the May 1978 annual meeting of the NRA, attended by approximately 100,000 persons who are directly or indirectly (i.e., suppliers, consultants, faculty members) involved in the

food services industry, RPAC conducted no solicitation activities.

105. In conducting its direct mail campaign for calendar year 1978, RPAC, on December 31, 1977, placed in the mail 7,509 communications to all of the members of the NRA requesting permission to solicit voluntary contributions from persons who normally receive NRA services, shareholders and executive or administrative personnel of member organizations. On April 1, 1978, an additional 8,250 communications to all of the members of the NRA requesting permission to solicit voluntary contributions from the shareholders and executive and administrative personnel of member organizations were placed in the mail.

106. In response to these requests for permission to solicit, 1,168 business organizations granted permission to solicit in 1978. These organizations provided permission to RPAC to solicit contributions from 3,196 individuals. Contributions to RPAC were received from 393 persons. RPAC does not know the exact number of persons from whom it could have solicited contributions had all the requests for permission been granted.

107. In 1979 RPAC has undertaken a similar direct mail campaign, supplemented by telephone communications. As of August 31, 1979 RPAC has already, on three separate occasions, mailed information brochures containing information requesting permission to solicit contributions from shareholders, executive and administrative personnel of member organizations to the more than 10,000 members of the NRA. In addition, RPAC has also sent a special mailing to the members of the Board of Trustees of RPAC whose organizations have not given permission

to solicit. RPAC also plans to send a special mailing to the members of the Board of Directors of the NRA whose organizations have not given permission to solicit. RPAC also plans to communicate by telephone with approximately 2,000 member organizations of the NRA which have not yet granted permission to solicit.

Additionally, in conjunction with the annual convention of the NRA held in May, RPAC invited the 352 organizations which had granted prior permission to attend a special reception sponsored by RPAC and held exclusively for NRA members. Attendees at this reception met Col. Harlan Sanders, at which time the purposes and goals of RPAC and RPAC's importance to the political process were discussed.

108. But for the prohibitions, restrictions, and sanctions contained in the 1976 Amendments to the Act, RPAC would have directly solicited voluntary contributions from each of the approximately 100,000 persons who attended the 1979 annual meeting of the NRA. However, because of the prohibitions, restrictions, and sanctions contained in the Act, RPAC was able to solicit contributions only from those executive and administrative personnel who are employed by an NRA member or the shareholder of an NRA member and their respective families, provided that the member had given prior permission or gave permission at the convention. RPAC does not know the total number of individuals from whom it would solicit contributions, but that number is at least 100,000.

109. Col. Harlan Sanders, the founder of Kentucky Fried Chicken is a revered and respected figure in the restaurant industry. He is both active in the affairs of the NRA and RPAC and had been involved in RPAC's

solicitation activities. His presence at NRA conventions has always created interest and the Colonel is a sought after figure at the conventions. In 1979, the Colonel, acting at RPAC's request and on its behalf, desired to solicit those attending the convention by telling them about RPAC, its goals and why he thought RPAC is important. However, fearing the restrictions imposed by the Act, the Colonel did not engage in the above activity except with those with whom prior permission had been granted.

110. RPAC has not sought an Advisory Opinion from the Commission concerning the proposed activities of Col. Sanders, nor has it done so since the commencement of this action.

111. RPAC has been denied permission to solicit by some of its members because they had given permission to another trade association. RPAC does not know the number of members who denied permission for this reason in 1977 or 1978. For the year 1979, as of August 30, 1979, of the 163 members which have specifically denied permission, 47 have denied for this reason.

112. The activities of RPAC are governed by a Board of Trustees, composed of ten (10) individuals selected by the President of the NRA, who are employees of members of the NRA. The members of the Board of Trustees are not paid for their services. The Board of Trustees meets approximately four (4) times per year. Included among the activities of the Board of Trustees is the selection of candidates to whom RPAC contributions will be made.

113. In selecting those candidates to whom RPAC will make contributions, the factors which the Board of Trustees consider include, but are not limited to, the candidates' allegiance to the free enterprise system, voting records on

particular issues, the State from which the candidate comes, the prognostication as to the probability that the candidate will be elected, and the degree to which a particular race is critical to the industry.

114. In addition to the Board of Trustees, four (4) individuals employed by the NRA are involved in the operation of RPAC. These persons implement the policies and decisions of the RPAC Board of Trustees and carry out the ministerial functions required to be fulfilled by the Act and regulations promulgated thereunder.

115. The reports filed by RPAC with the Commission show that in 1975 RPAC reported receipts of $36,485 and expenditures of $33,560; in 1976 RPAC reported receipts of $45,890 and expenditures of $55,845; in 1977 RPAC reported receipts of $36,672 and expenditures of $16,315 and in 1978 RPAC reported receipts of $40,106 and expenditures of $75,620. (These figures are taken from reports filed with the Commission by RPAC which are on the public record.)

116. Bread Political Action Committee ("BreadPAC") is a separate segregated fund established in 1974 by the American Bakers' Association ("ABA") and is duly registered with the Federal Election Commission. The costs of solicitation of voluntary contributions to BreadPAC, as well as legal expenses incurred in the administration of BreadPAC, are paid by the Political Education Committee of the ABA.

117. The Political Education Committee whose overhead expenses are paid for by the ABA is a separate fund of the ABA which accepts voluntary contributions from the member companies of the ABA for the purpose of furthering the political education activities of the ABA, as

described more fully hereinafter, and for paying those costs related to BreadPAC's operations described in paragraph 116 above.

118. BreadPAC has, since its inception, engaged in telephone, direct mail, and face to face solicitations of contributions to be used by BreadPAC for the purpose of influencing federal elections. In addition, in 1975 and 1976, BreadPAC had regional dinners described more fully hereinafter at paragraph 122.

119. The ABA maintains a mailing list of its members. This list contains the names of the members and the names of certain employees who are of the rank of plant manager or above, and who are designated by their companies to receive ABA services.

120. Prior to May 11, 1976, BreadPAC solicited both individuals who were employed by members of the ABA, and also individuals not employed by members of the ABA who were involved in the baking industry.

121. BreadPAC does not know the precise number of individuals who were solicited prior to May 11, 1976; however, BreadPAC does know that at least all persons whose names were on the mailing list of the ABA and designated to receive services from the ABA were solicited for voluntary contributions to BreadPAC. Prior to May 11, 1976 BreadPAC also solicited an unknown number of people who were not designated to receive ABA services and who were not on the mailing list of ABA.

122. In addition, prior to May 11, 1976 BreadPAC held two regional dinners, one each in 1975 and 1976. Invited to the regional dinners and in attendance at the dinners were both ABA members and non-members who were in-

volved in the baking industry. The operating costs for these dinners were paid by the Political Education Committee of the ABA. The ticket price for attendance at each dinner was $100 per couple which was a contribution to BreadPAC.

123. Prior to May 11, 1976, BreadPAC also engaged in solicitation activities at both the Spring and Fall meetings of the ABA. At these meetings, which were closed to the general public and open only to members and others ABA identified as engaged in activities related to the baking industry, BreadPAC solicited everyone who attended these conventions for contributions. As each individual came to the registration desk, he or she was solicited by BreadPAC. The solicitation process consisted of asking the person to attend a $100 per couple reception at which there would be a speaker and occasionaly entertainment. The speaker was always a senator, congressman, or other governmental official who spoke on issues of importance to the baking industry. BreadPAC also engaged in telephone and mail solicitation activities in conjunction with these meetings. BreadPAC has no information on the exact number of persons who were solicited prior to May 11, 1976 at the Spring and Fall Meetings of the ABA.

124. After May 11, 1976, the effective date of the 1976 Amendments to the Act, BreadPAC requested permission from the ABA members to solicit the executive and administrative personnel of each member. Prior to the FEC Amendments, BreadPAC had never requested permission to solicit and had conducted its solicitations without any prior approval.

125. BreadPAC did not attempt to obtain permission to solicit the stockholders of ABA members because most

of the companies in the industry are small family-owned businesses where the executive and administrative personnel are in fact in most cases the principal stockholders. There are only a few companies that are publicly owned.

126. BreadPAC does not know the exact number of executive and administrative personnel employed by members of the ABA, nor does BreadPAC know the precise number of ABA members which are publicly owned or how many shareholders those member companies have.

127. From May 11, 1976, through December 31, 1976, BreadPAC solicited contributions from all the persons it could have solicited contributions from with the requests that were granted.

128. In 1976, approximately 16% of those members asked for permission to solicit expressly refused permission and approximately 30% failed to respond to the request. In 1977, approximately 11% of those members asked for permission to solicit expressly refused permission and approximately 39% failed to respond to the request; and, in 1978, approximately 6% of those members asked for permission to solicit expressly refused permission and approximately 59% failed to respond to the request.

129. Of those ABA members which had declined permission to solicit, some refused to allow permission and stated that it was because they felt that granting permission to BreadPAC would require granting permission to the Red Cross, the Cancer Fund and the United Way. BreadPAC does not know the exact number of persons who gave these reasons for refusing permission to solicit.

130. Some ABA members have refused to give permission to solicit because of their fear and general apprehension about being involved in the whole political fund

area due to the Watergate scandal. BreadPAC does not know the exact number of persons who gave this reason for refusing permission to solicit.

131. Some ABA members have refused to give permission to solicit because they had already given prior permission to another trade association to conduct solicitation activities during the same calendar year.

132. At each of the Spring and Fall meetings of the ABA held subsequent to May 11, 1976, BreadPAC did not, because of the Act, solicit any executive or administrative personnel of a corporate member which had not given prior permission. For purposes of those solicitation activities, all of the approximately 350 ABA members were treated as incorporated, although fewer than 20 are not incorporated. BreadPAC did not determine with absolute certainty which members were not incorporated because (1) fearing the imposition of civil or criminal penalties in the event that executive or administrative personnel of an incorporated member were impermissibly solicited, BreadPAC wanted to be absolutely certain of the status of each member before it would have communicated directly with executive or administrative personnel of a non-corporate member; and, (2) the only way to ensure which members did not utilize the corporate form required that each of the approximately 350 members of the ABA be contacted personally by a member of the BreadPAC staff, a task which would involve a substantial commitment of staff and other resources.

BreadPAC has developed an elaborate system to assure compliance with the FECA and Regulations at ABA meetings. Prior to each meeting, the staff reviews all

registration envelopes and marks each one with the appropriate designation:

- a white dot for those who have authorized solicitation;
- a red dot for those who have denied permission to solicit;
- a dollar sign for those who have previously contributed and should be given tickets for the reception;
- no mark for those who have not responded to the solicitation authorization.

When these individuals come to the registration desk to pick up their envelopes, the ABA staff person asks him or her whether he or she is authorized to give permission to solicit on behalf of the company. If he or she responds affirmatively then the ABA staff person requests authorization. If the response is negative, the ABA staff person immediately terminates discussion of BreadPAC.

133. At the Board of Governors' meetings at both the Spring and Fall meetings of the ABA, BreadPAC made a report to the Board of its activities. Prior to making the reports, BreadPAC's treasurer requested that everyone not authorized to be solicited leave the room. This was done pursuant to FEC Advisory Opinion 1976-27. This procedure, and others required by Advisory Opinion 1976-27, has been and are being followed by the ABA at all its meetings to the present, and was employed at the ABA's most recent meeting in April 1979.

134. During the summer of 1976, BreadPAC spent virtually its entire time trying to explain to the members of the ABA the requirements of FECA and trying to get

permission to solicit. Thus, BreadPAC did very little actual soliciting prior to the Fall 1976 ABA meeting.

135. Compliance with the Act's restrictions on BreadPAC's solicitation activities has resulted in increased costs and has imposed an additional administrative burden on BreadPAC. For example, in January of each year, BreadPAC sends out approximately 350 separate requests for permission to solicit. In February, a second request is sent to all those who did not respond to the first request. In preparation for the Spring ABA meeting, BreadPAC must go through all of the solicitation authorization records to put the appropriate sticker on a registrant's envelope. After the Spring meeting, BreadPAC sends its first mail solicitation. To do this, except in those few instances in which a member provides BreadPAC with a specific list of permissible solicitees, BreadPAC must cull out from the membership records of the ABA the names of the administrative and excutive personnel of members who have given prior permission to solicit. This process must again be repeated both for the Fall meeting of the ABA and for the Fall mail solicitation, taking into account any additional grants of permission to solicit which BreadPAC may receive from ABA members after the first mail solicitation.

136. This same process detailed in paragraph 135 above, must be repeated anew every year since the Act requires annual renewal of authorization.

137. In addition, because BreadPAC has a policy not to solicit any individual for the remainder of the calendar year once he has contributed $200.00, BreadPAC culls his name from its records.

Findings of Fact

138. The number and amount of contributions to BreadPAC have not varied greatly when a non-election year is compared with the immediately following election year. See Plaintiff's Exhibit 1-26.

139. The reports filed with the Commission by BreadPAC show that in 1975 it reported gross receipts of $40,190 and made expenditures of $13,551.46, in 1976 it reported receipts of $38,712 and expenditures of $58,157, in 1977 it reported receipts of $28,000 and expenditures of $9,000, and in 1978 it reported receipts of $29,550 and expenditures of $43,750.

140. If the Act's restrictions on trade association solicitation activities contained in 2 U.S.C. § 441b(b)(4)(D) did not exist, BreadPAC, without obtaining anyone's prior permission would request contributions to BreadPAC from: all the executive and administrative personnel of ABA's members, both baker and allied members; and, all those people identified by the ABA as persons who are involved with the baking industry regardless of whether those persons were affiliated with an ABA member. In addition, BreadPAC would mail informational literature to such individuals in advance of both the Spring and Fall meetings of the ABA, as well as in advance of the Quandrennial Exposition of the ABA described more fully hereinafter. This informational literature, if it could be sent, would announce the existence of BreadPAC, its purposes, goals and its opinion as to the importance of individuals' voluntarily associating together and contributing money to candidates for Federal office who believe in the private enterprise system and whose election would be in the best interest of the industry and would solicit voluntary contribution to BreadPAC. These pieces of information

literature would not espouse the election of any particular named candidate.

141. Every four years, the ABA and the Bakery Equipment Manufacturer's Association sponsor an Exposition which historically has been attended by approximately 20,000 people. The last such Exposition was held in 1977 and there were approximately 20,000 people in attendance. Each person who attends the Exposition is involved in the baking industry since it is only open to such people.

142. At this Exposition, it is required that each person in attendance register. Thus, the ABA and BreadPAC have immediate access to these people's names and addresses, and BreadPAC would, but for the restrictions contained in 2 U.S.C. § 441b(b)(4)(D), solicit each of these people without obtaining prior permission and regardless of whether that person was an administrative or executive employee of an ABA member company. This solicitation, if allowed, would be by direct contact at the Exposition as well as by prior mail solicitation.

143. At the ABA Quadrennial Exposition in 1977, BreadPAC did not engage in unrestricted solicitation as it wanted to. BreadPAC's solicitation activities at this show were the same as its solicitation activities at its annual Fall and Spring meetings described earlier.

144. Since § 441b(b)(4)(D) restricts trade associations from soliciting any executive or administrative personnel for whom solicitations by another trade association had been previously authorized by the member corporation within the calendar year, and therefore the member company could not legally authorize BreadPAC to make such solicitations, BreadPAC has not, since May 11, 1976, know-

ingly solicited such persons since it could not receive authorization. But for these restrictions, BreadPAC would engage in such solicitations.

145. In 1976 and in 1978 BreadPAC lacked funds to contribute to as many candidates as it wanted (or in the amounts it wanted) and to as many candidates as made requests to it for contributions.

146. After BreadPAC made its first contributions in 1974, it decided to carry over some funds from each campaign to finance operations early in the following year, before the first fundraiser in the Spring of the next year. Thus in 1975, BreadPAC had a carryover of about $1,700.

147. After the enactment of the 1976 FECA Amendments, the Board of Directors of BreadPAC decided to increase the carryover to approximately $10,000. This was done because the Board was apprehensive about BreadPAC's ability to raise substantial funds under the new law. The Board wanted to assure that BreadPAC would have ample funds to sustain its activities, if the restrictions on solicitation resulted in significantly reduced contributions.

148. In 1978, the Board once again decided to increase the BreadPAC carryover, due to the formation of BakePAC, the PAC of the Independent Bakers Association, in June. The Board recognized that BreadPAC's authorizations, and hence its contributions, would probably be still further reduced by the establishment of this competing PAC. Accordingly, BreadPAC's carryover was raised to about $14,000. The Board believed this would be a prudent sum in view of the likelihood of further decreases in contributions to BreadPAC.

Findings of Fact

149. At the end of March 1974, the ABA Executive Committee made the decision to establish BreadPAC. The ABA Executive Committee is *not* the chief governing Board of the ABA. It is responsible for the day-to-day operations of the Association.

150. Prior to the creation of BreadPAC, there was considerable discussion among ABA's members about the decision to establish it; and, in the days preceding the Executive Committee meeting where the decision was ratified, there were discussions with many members of the ABA. No formal vote was ever taken of the membership regarding the establishment of BreadPAC.

151. BreadPAC has a twelve member Board composed of eight baker members and four supplier (viz. allied) members. The BreadPAC Board is "self-perpetuating," selecting Board members and a Chairperson biannually. Vacancies within the term are filled by the Chairperson. This board has the ultimate decision making authority regarding BreadPAC's operations. The Board meets at least twice a year or more often if circumstances require it.

152. The BreadPAC Board makes its decisions by voting, and each member of the Board has the same vote. The Board is concerned with solicitation of contributions, making of contributions, and actions by the FEC which would affect BreadPAC's operations.

153. In deciding to which candidates for federal office BreadPAC should contribute, the Board employs five criteria: closeness of the race; the candidates' need for the money; the candidates' voting record on issues of importance to the industry; the candidates' committee position, if any; and the overall attitude toward the aims of the industry.

Findings of Fact

154. Information about the candidates is obtained from a variety of sources, including information volunteered to BreadPAC from ABA members. Other sources of information include the Republican and Democratic House and Senate Campaign Committees, political newsletters, people in the States where the elections are taking place and the leading newspapers of those states.

155. BreadPAC, and not the ABA, informs contributors (i.e., executive and administrative personnel of member companies) of election campaign activities generally, including the philosophies of the candidates; and, in particular, BreadPAC informs its contributors of the election campaign activities of candidates who are sympathetic to the interests of the baking industry and who share the industry's approach to governmental responsibilities.

156. The principal governing board of the ABA is the Board of Governors composed of one member and one alternate member from each ABA member. Other than membership in the ABA, there are no qualifications for membership on the Board of Governors. Thus, there are approximately 350 governors and 350 alternates. The daily operation and decisions on routine policy matters are conducted by the Executive Committee.

157. Each member of the ABA determines who it will have representing it on the Board of Governors, and each Governor serves on the Board until replaced by the particular ABA member. The Board meets at least twice a year, and each baker member has voting privileges. Each allied or supplier member is entitled to fully participate in Board meetings but they are not entitled to vote on matters which come before the Board.

Findings of Fact

158. Neither the Board of Governors nor any other board or committee of the ABA has any governing responsibilities with respect to BreadPAC.

159. The ABA is an open association in that any member who wants to can belong to practically any committee with the exception of the Executive Committee and the Exposition Committee, which manages the ABA Quadrennial Exposition.

160. The ABA is an incorporated trade association which is comprised of approximately 359 businesses, organizations and has a twelve person staff.

161. Approximately 80% of the wholesale bakers in the United States are members of the ABA. Membership solicitation is informal and often new members are recommended by current members.

162. ABA dues are based on the amount of flour usage (in the case of a baker member) or on the amount of sales to the baking industry (in the case of allied members).

163. Questions relating to dues structures or policy questions of a legislative or regulatory nature are voted on by the Board of Governors.

164. The ABA has never used a list obtained in any manner from any other trade association in order to solicit members for ABA.

165. The various services of the ABA are available only to the ABA members.

166. The ABA has numerous committees which, as with most other trade associations, perform the basic work of the association. Membership in these committees is on a voluntary basis and is open to all ABA members. Committee decisions are on a consensus basis.

Findings of Fact

167. The ABA has an Environmental Health and Safety Committee which assists members in compliance with federal air and pollution control laws, and it works with the National Safety Council to promote industrial safety in the industry to comply with the OSHA laws and regulations.

168. The ABA has an Energy Task Force which is involved with compliance with the energy laws, and particularly with respect to the regulations concerning the use of natural gas, gasoline and diesel fuel. The Energy Task Force has been closely involved in sending out information to members relating to natural gas and the availability of gasoline and diesel fuel.

169. The Public Relations Committee is concerned with generic product promotion and prepares a public relations manual for the members in conducting their own public relations.

170. The ABA Food Technical Regulatory Affairs Committee is concerned with matters within the jurisdiction of the Food and Drug Administration and the Federal Trade Commission. For example, recently the FDA has sumstantially changed the labeling requirements for bakery products, and the ABA Food Technical Regulatory Affairs Committee prepared a manual to assist members in complying with the new labeling regulations.

171. The ABA has a very active Industrial Relations Committee which compiles statistics concerning collective bargaining agreements which are entered into by members of the industry so that members in other parts of the country will know what bargaining agreements other members have entered into.

172. The ABA also has a Transportation and Traffic Committee which is concerned with ICC-type regulations affecting the industry.

Findings of Fact

173. In addition to these committees, there is a Statistics Committee which keeps totals of production of bread and cake products by the industry so that people can follow the trends of production and compare them from month to month and year to year.

174. The Political Education Committee encourages individual member involvement in the political process. The Political Education Committee also compiled a list of all of the voting and campaign contribution requirements in the different states because there are some States that allow a contribution of corporate money to state and local campaigns.

175. The ABA also has a National Affairs Committee composed of thirty representatives of ABA members who volunteer for service on the Committee. This committee is the principal committee concerned with legislative activity.

176. BreadPAC has adopted a policy of discussing with the ABA's National Affairs Committee prospective contributions in order to get their advice and input.

177. The ABA's activities consist, inter alia, of lobbying activities, testifying before congressional committees and agencies, meeting with agencies of government and providing the ABA membership with current information about anticipated, proposed and enacted legislation affecting the membership. The ABA does not presently communicate about these matters with persons other than its members because, first, it does not believe that it would influence anybody but its members, and, second, because it has been advised by counsel that it would jeopardize the tax deductibility of the members' dues.

Findings of Fact

178. The ABA finances the publication of a weekly bulletin stating the ABA's views in order to inform the membership regarding anticipated proposed and enacted legislation affecting the membership. In addition, the Political Education Committee of the ABA will, from time to time, reprint material from the Congressional Record or analyses of bills prepared by the ABA staff, or material that has been prepared by others which is relevant to issues that the industry is concerned about. This material is circulated to approximately 1,500 people who have been designated by the ABA's membership to receive ABA services. The ABA also finances the preparation and distribution of other material to members urging them to contact their Senators and Congressmen to express their views on specific issues.

179. The ABA finances the preparation and presentation of the association's views to congressional committees on legislation and issues of interest to the association. In addition, the ABA finances the presentation of its views through direct communication with congressional staff people on a continuing basis. At all times since at least 1974, the ABA has had five or six individuals who are registered lobbyists and who are paid by the ABA. These registered lobbyists of the ABA contact senators, congressmen and their staffs to give them the ABA's views on matters of importance to the ABA.

180. The ABA finances the preparation and presentation of its views to administrative agencies on issues of importance to the ABA. The ABA's views are presented to the agencies through the filing of comments on rulemaking, testifying at administrative hearings and personal contacts with staff members of the administrative agencies.

Findings of Fact

181. There is an overlap of asociational membership between ABA and other trade associations, although the precise extent of such overlap is not known. However, a baker member might belong to one of a number of other organizations in the food industry; for example, the Grocery Manufacturers Association, the American Frozen Food Institute, the Food Marketing Institute, the Independent Bakers Association, plus state, regional and local bakers associations.

If a person were an allied member, supplier, or an equipment manufacturer, he might belong to the Bakery Equipment Manufacturers Association. If the person were a miller—that is a person who milled wheat into flour—he might belong to the Millers National Federation. If a person were in the business of supplying certain kinds of ingredients to the baking industry, he might belong to the National Bakery Supply Association. If he were a flour distributor, he might belong to the National Association of Flour Distributors. These are just some of the other organizations to which ABA baker and allied members might possibly belong.

182. Of these associations, three have PACs; namely, the Independent Bakers, the Frozen Food Institute and the Food Market Institute.

183. With respect to those matters which affect the baker member, *qua* baker, only the ABA represents the interests of all members of the baking industry.

184. The ABA contributes to and supports the activities of the American Institute of Baking, which is the technical and educational arm of the industry.

185. In 1974, the ABA began to take in allied (viz. supplier) members. Thus, the ABA's membership grew significantly during the 1974-1975 period.

Findings of Fact

186. The ABA Budget for fiscal year 1975 was $704,960; fiscal year 1976, $770,380; fiscal year 1977, $828,580; fiscal year 1978, $787,800. ABA estimates that in each year it spent approximately 20% of its budget in public affairs activities. The approximately 20% of the ABA budget does not include any BreadPAC activities.

187. Voluntary contributions are solicited and made by plaintiffs without regard to party affiliation of either the prospective contributor or the candidates, political parties or political campaign committees who are the potential recipients of these funds.

188. The solicitation activities of each of the Plaintiffs is directed to the dissemination of ideas, opinions and political information about matters of vital national and regional concern and of concern specifically to the respective industries which each of the Plaintiffs represents. (Plaintiffs Exhibits 1-01A, 1-02, 1-03, 1-04, 1-05, 1-06, 1-06A, 1-07, 1-08, 1-09, 1-10, 1-11, 1-12, 1-14, 1-15, 1-16, 1-17, 1-18, 1-19, 1-20, 1-21, 1-22, 1-23, 2-01, 3-01 through 3-13.)

189. The scope of the Plaintiffs' solicitation activities has been curtailed by the Federal Election Campaign Act, as amended, in that the number of persons which each Plaintiff may legally solicit has been curtailed by the Act. (Plaintiffs' Exhibits 1-13, 1-26, 1-27, 1-30, and ¶¶ 55, 56, 58, 60, 61, 62, 63, 64, 98, 101, 102, 103, 104, 106, 107, 108, 109, 111, 124, 128, 131, 133, 134, 135, 136, 139, 140, 142, 143 and 144, *supra.*)

190. Francis S. Andrews, President, American Fund Raising Services, is qualified to provide expert testimony on the impact of the Federal Election Campaign Act, as amended, upon the political fundraising activities of the Plaintiffs. (Andrews Deposition, pp. 4-11, 30-31.)

Findings of Fact

191. Mr. Andrews testified that, in his expert opinion, political fundraising is no different than any other type of fundraising, in that the methods for raising funds are the same. (Andrews Deposition, p. 11.)

192. Mr. Andrews further testified that the size and "quality" of the lists of potential contributors is the basic ingredient which will determine the relative success of any fundraising endeavor, including political fundraising. There is thus a direct correlation between the number of persons who may be solicited and who have some interest in the cause for which the funds are being solicited and the amount of money which can be raised. (Andrews deposition, pp. 38-41.)

193. Mr. Andrews identified "two major stumbling blocks" in the Federal Election Campaign Act, as amended, which impede the ability to obtain an adequate list of potential contributors. First, by requiring that each corporation grant prior permission to a trade association of which it is a member before any solicitation may take place, and by permitting each corporation to grant such permission to only one trade association per calendar year, the Act limits the size of the list of potential contributors who might otherwise have an interest in participating in the activities of the soliciting organization by making a political contribution. Second, by permitting the corporation to limit the number of persons within the company who may receive such solicitation materials, the Act further restricts the size of the list of potential contributors who might otherwise have an interest in participating in the activities of a soliciting organization by making a political contribution. (Andrews deposition, pp. 41-44.)

Findings of Fact

194. Upon review of Plaintiffs' Exhibits 1-02 through 1-23, 1-24, 1-26, 1-27, 1-29, 1-30, and 1-31, with respect to the political fundraising activities of Plaintiff BreadPAC, Mr. Andrews stated the following opinions:

(a) The methodology employed by BreadPAC in the solicitation of funds did not vary from 1974 to the present; and, therefore, did not affect the ability of BreadPAC to raise funds;

(b) The national economy did not affect the amount of funds raised by BreadPAC from 1974 to the present; and, in fact, BreadPAC raised more funds during the recession of 1974-1975, which was a "severely recessionary" time for fundraising generally, than during the period 1976 through 1979, which were "excellent years" for fundraising.

(c) The location of the fundraising events conducted by BreadPAC had no effect upon the amount of funds raised by BreadPAC.

(d) There is "no doubt" that the diminution of funds raised by BreadPAC was due to the prohibitions and restrictions imposed by the 1976 Amendments to the Federal Election Campaign Act, which, as previously explained, severely limited the size and scope of BreadPAC's solicitation activities.

(Andrews deposition, pp. 51-57.)

195. Prior to the time the 1976 Amendments to the Act became effective on May 11, 1976, each of the Plaintiffs had solicited voluntary contributions from various employees of its member corporations, without regard as to whether they were "executive or administrative personnel" within the meaning of 2 U.S.C. § 441b(b)(7) and also solicited voluntary contributions from individuals who were not employees of their respective corporate members. These solicitations were conducted without having ob-

tained prior approval from their respective corporate members.

196. In the instance of each Plaintiff, an integral part of their solicitation activities was, and in the case of Bread-PAC, the NRA, and RPAC, continues to be a discussion and espousal of the political and social ideas, opinions, views, and beliefs of each Plaintiff concerning matters of national concern and of concern to their respective industries.

197. The funds realized from this solicitation activity constitute the primary source of revenue for the Plaintiff political action committees. Moreover, the ability of, and the extent to which, the Plaintiff political action committees are able to express their support for candidates for Federal office by making political contributions to these candidates and otherwise engage in protected First Amendment activity is directly related to the extent to which they can solicit voluntary contributions.

198. The 1976 Amendments to the Act have had the effect upon each Plaintiff of substantially curtailing each Plaintiff's solicitation activities. In the case of Plaintiffs NLBMDA and LuDPAC, their solicitation activities have been terminated.

199. Furthermore, but for the Act, Plaintiffs would engage in a broad range of solicitations directed to those persons who have an affinity of interest with the Plaintiffs, without regard to whether such persons are employees or members of the organizational Plaintiffs.

200. The 1976 Amendments to the Act have limited the ability of each of the Plaintiffs to raise voluntary funds for political purposes, have limited each Plaintiff's ability to engage in protected political speech and association, and

have limited the right of persons with similar or related interests to receive from the Plaintiffs communications expressing political ideas, opinions, views, and beliefs and thereby associate themselves with the Plaintiffs.

201. The 1976 Amendments to the Act place no comparable prohibitions and limitations upon membership organizations and their political action committees, corporations and their political action committees, labor organizations and their political action committees, or independent political action committees.

202. The LuDPAC governing board was aware of the advisory opinion procedure, 2 U.S.C. § 437f, in 1976 but never discussed seeking an advisory opinion from the Commission prior to the institution of the instant action. *See* Deposition of Joseph William Hobson, April 17, 1979 at 70-74 (hereinafter "Hobson deposition").

203. The entire amount of dues of NLBMDA members are used solely to fund only the Legislation and Governmental Agency Affairs Division ("L&GAA") of NLBMDA and certain functions of the executive vice president. *See* Hobson deposition at 125.

204. The L&GAA of NLBMDA has responsibility for the dissemination of ideas, opinions and political information about matters that NLBMDA perceives to be of vital national or regional concern. *See* Hobson deposition at 90.

205. LuDPAC has no staff of its own; it operates out of NLBMDA's offices. *See* Hobson deposition at 58, 58A.

206. The ABA's Political Education Committee is not registered as a political committee pursuant to 2 U.S.C. § 433(a). *See* generally, public registration files located at the Federal Election Commission.

Findings of Fact

207. The ABA's Political Education Committee solicits contributions from ABA members—corporate and non-corporate—and uses such solicited contributions to pay the costs of BreadPAC's solicitations of voluntary contributions. *See* deposition of Robert J. Wager, April 16, 1979 at 57, 58 (hereinafter "Wager deposition").

208. BreadPAC has no staff employees itself; ABA employees carry out the day to day work of BreadPAC. *See* Wager deposition at 22.

209. The ABA treats every member as a corporation, whether they are or are not in fact corporations. *See* Wager deposition at 92.

210. Neither the ABA nor BreadPAC has ever solicited contributions from ABA's executive and administrative personnel. *See* Wager deposition at 83.

211. NRA has no way of telling the business organization form of any of its members. *See* Deposition of Brian G. Harron, April 10, 1979 at 36 (hereinafter "Harron deposition").

212. NRA seeks permission to solicit employees of all organizational members, allied members, and not-for-profit members. *See* Harron deposition at 58.

213. The most recent published figures compiled by the Commission which were released on May 10, 1979, covering the period January 1, 1977 - December 31, 1978, show:

(a) that two separate segregated funds established by trade associations were among the top ten non-party political committees in terms of both gross receipts (receipts minus transfers in from affiliated committees) and total contributions to candidates;

(b) that four of the top ten non-party political committees in terms of gross receipts (receipts minus transfers in from affiliated committees) were neither separate segregated funds established by corporations nor labor organizations but were independent political committees not connected to any organization;

(c) that of the top six non-party political committees in terms of gross receipts (receipts minus transfers in from affiliated committees) three were not connected to any organization, two were separate segregated funds of trade associations and one was the separate segregated fund of the American Medical Association, a trade association/membership organization. These six political committees' gross receipts for this period total $13,086,229.00; and

(d) that of the top three non-party political committees in terms of contributions to candidates, two were separate segregated funds of trade associations and one was the separate segregated fund of the American Medical Association, a trade association/membership organization. These three separate segregated funds contributed $3,742,848.00 during this period.

See FEC Report on Financial Activity 1977-1978, Interim Report No. 4, May, 1979 (copy of this four volume study is available upon request).

214. From his personal experience, Mr. Andrews found that employees of corporations which are solicited by their employer's trade associations give contributions in order to stay on the good side of the industry. See Deposition of Francis S. Andrews, August 15, 1979 at 139-40 (hereinafter "Andrews deposition").

Order

215. Mr. Andrews gave the trade association of which he was then president permission to solicit ten out of thirty executive and administrative personnel of his corporation. He did not give permission to the trade association to solicit the others because he would not "expose [his] junior executives to a corporate fundraising solicitation," thus, "exercising his judgment that they should not be placed under that moral pressure to give." *See* Andrews deposition at 138-39, 146.

....

Date United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

December 19, 1979

Cause No. 77 C 947

Bread Political Action Committee

v.

Federal Election Commission

ORDER

Enter Constitutional Questions certified to the U.S. Court of Appeals for the Seventh Circuit. Draft

Marshall, J.

Constitutional Questions

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CIVIL ACTION NO. 77 C 947

BREAD POLITICAL ACTION COMMITTEE, et al.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,

Defendants.

CONSTITUTIONAL QUESTIONS
CERTIFIED TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

(Filed January 23, 1980)

1. Whether 2 U.S.C. § 441b(b)(4)(D), both facially and as applied, infringes plaintiffs' right of assembly guaranteed by the First Amendment to the Constitution of the United States of America?

2. Whether 2 U.S.C. § 441b(b)(4)(D), both facially and as applied, deprives plaintiffs of liberty without due process of law in violation of the Fifth Amendment to the Constitution of the United States?

3. Whether the failure of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 *et seq.*, to define the term "solicitation" infringes plaintiffs' right of as-

sembly guaranteed by the First Amendment to the Constitution of the United States, or deprives plaintiffs of liberty without due process of law in violation of the Fifth Amendment to the Constitution of the United States?

4. Whether the failure of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431, *et seq.*, to define the term "trade association," as used in 2 U.S.C. § 441b(b)(4)(D), violates the due process clause of the Fifth Amendment to the Constitution of the United States?

DATE: December 19, 1979

/s/ *Prentice Marshall*

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BREAD POLITICAL ACTION COMMITTEE, et al.,

Plaintiffs,

v. CIVIL ACTION NO. 77-C-947

THE FEDERAL ELECTION COMMISSION, et al.,

Defendants.

AFFIDAVIT OF DAVID A. KEENE

David A. Keene, being duly deposed and sworn, says:

1. That in April 1974 he was employed on the United States Senate staff of the Hon. James Buckley, former United States Senator from New York, in the capacity of Executive Assistant.

2. That during the course of his employment, he provided assistance to Senator Buckley during the deliberations concerning the 1974 Amendments to the Federal Election Campaign Act of 1971.

3. That he was specifically requested by Senator Buckley to draft an amendment to the aforementioned Act, which amendment expedited judicial review of any challenge to the constitutionality of the Act in question.

4. That he did draft the aforedescribed amendment, which, after review, modification and approval by Senator Buckley, was introduced by Senator Buckley and debated on the floor of the United States Senate, and accepted by that body as an amendment to the aforementioned Act on April 10, 1975.

5. That the amendment drafted by him, and as modified, approved and introduced by Senator Buckley reads as follows:

> On page 4 of the amendment, after line 20, insert the following:
>
> On page 65, between lines 6 and 7, insert the following:
>
> EXPEDITIOUS REVIEW OF CONSTITUTIONAL QUESTIONS
>
> Section 214. Title IV of the Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new section:
>
> JUDICIAL REVIEW
>
> "Sec. 407. (a) The Federal Election Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this Act or of Chapter 29 of title 18, United States Code.

The district court shall immediately certify all questions of constitutionality of this Act of the United States court of appeals for that circuit, which shall hear the matter sitting en banc.

"(b) Notwithstanding any other provision of law or rule any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal must be brought within 20 days of the court of appeals decision.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any question certified under subsection (a)."

6. That Senator Buckley's purpose and the intent of the amendment was to provide expedited judicial review of questions concerning the constitutionality of the Act to any aggrieved individual, organization or group of individuals or organizations which challenge the constitutionality of the Act in whole or in part, that the classes enumerated in the amendment were illustrative, and that such enumeration was not intended to limit the class or classes of aggrieved parties who might avail themselves of this amendment.

7. Further affiant saith not.

/s/ *David A. Keene*
David A. Keene

Subscribed and sworn to before me this 21st day of October, 1977.

/s/ *Joan F. McDarby*
Notary Public

My Commission expires: April 14, 1982

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BREAD POLITICAL ACTION COMMITTEE, et al.,

Plaintiffs,

v. Civil Action No. 77 C 947

THE FEDERAL ELECTION COMMISSION et al.,

Defendants.

Affidavit of James Buckley

James Buckley, being duly deposed and sworn, says:

1. That he was United States Senator from the State of New York from 1971 to 1977.

2. That, during the debate concerning the 1974 Amendments to the Federal Election Campaign Act of 1971, he caused to be drafted an amendment which provided for expedited judicial review of any challenge to the constitutionality of the Act in question.

3. That he directed that David A. Keene, who was at that time employed as Executive Assistant on his United States Senate staff, prepare a draft of the aforedescribed amendment.

4. That, after review, modification and approval of the same, he introduced the aforedescribed amendment on April 10, 1974, on which day the amendment was debated and accepted by the United States Senate.

5. That the amendment reads as follows:

On page 4 of the amendment, after line 20, insert the following:

On page 65, between lines 6 and 7, insert the following:

EXPEDITIOUS REVIEW OF CONSTITUTIONAL QUESTIONS

Section 214. Title IV of the Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new section:

JUDICIAL REVIEW

"Sec. 407. (a) The Federal Election Commission, the national committee of any national party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this Act or of Chapter 29 of title 18, United States Code. The district court shall immediately certify all questions of constitutionality of this Act to the United States court of appeals for that circuit, which shall hear the matter sitting en banc.

"(b) Notwithstanding any other provision of law or rule any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal must be brought within 20 days of the court of appeals decision.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any question certified under subsection (a)."

6. That the purpose and intent of the amendment was to provide expedited judicial review of questions concerning the constitutionality of the Act, and that it was not his intent to exclude from the provisions of this amendment any individuals or group of individuals acting through associations or organizations in challenging the constitutionality of the Act in whole or in part.

7. Further affiant saith not.

/s/ James Buckley
James Buckley

Subscribed and sworn to before me this 11 day of November, 1977.

/s/ Charles W. Minerly, 3rd
Charles W. Minerly, 3rd
Notary Public, State of New York
No. 41-7964440 - Queens County
Certificate filed in New York County
Term Expires March 30, 1978

CERTIFICATE OF SERVICE

I certify that I caused a copy of the attached Plaintiffs' Petition For Permission To Appeal Pursuant To Rule 5 Of The Federal Rules Of Appellate Procedure to be mailed to Defendants' Counsel, William Oldaker, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463 on November 18, 1977.

/s/ Jeffrey Cole